CUSTOMS BULLETIN AND DECISIONS

Weekly Compilation of

Decisions, Rulings, Regulations, Notices, and Abstracts

Concerning Customs and Related Matters of the

U.S. Customs Service

U.S. Court of Appeals for the Federal Circuit

and

U.S. Court of International Trade

VOL. 30 **JULY 24, 1996** **NO. 29/30**

This issue contains:

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE

NOTICE

The decisions, rulings, regulations, notices and abstracts which are published in the CUSTOMS BULLETIN are subject to correction for typographical or other printing errors. Users may notify the U.S. Customs Service, Office of Finance, Logistics Division, Printing and Mail Group, Washington, DC 20229, of any such errors in order that corrections may be made before the bound volumes are published.

For sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402

U.S. Customs Service

Treasury Decisions

19 CFR Parts 10, 12, 102 and 134

(T.D. 96–48)

RIN 1515–AB34

RULES FOR DETERMINING THE COUNTRY OF ORIGIN OF A GOOD FOR PURPOSES OF ANNEX 311 OF THE NORTH AMERICAN FREE TRADE AGREEMENT; CORRECTIONS

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule; corrections.

SUMMARY: This document makes corrections to the document published in the Federal Register which set forth final amendments to the Customs Regulations regarding the rules for determining when the country of origin of a good is one of the parties to the North American Free Trade Agreement (NAFTA) as required by Annex 311 of the NAFTA.

EFFECTIVE DATE: These corrections are effective August 5, 1996.

FOR FURTHER INFORMATION CONTACT: Sandra L. Gethers, Office of Regulations and Rulings (202–482–6980).

SUPPLEMENTARY INFORMATION:

BACKGROUND

On June 6, 1996, Customs published in the Federal Register (61 FR 28932) as T.D. 96–48 a document which adopted as a final rule, with some modifications, interim amendments to the Customs Regulations that established the rules for determining when the country of origin of a good is one of the parties to the North American Free Trade Agreement (NAFTA) as required by Annex 311 of the NAFTA. Those final NAFTA Marking Rules apply only to all goods imported from Canada or Mexico other than textile and apparel products, and do not apply to trade with other countries. The June 6, 1996, notice provided for an August 5, 1996, effective date for the final regulations. This document corrects some errors published in T.D. 96–48.

Several errors involved the Background discussion under the SUPPLEMENTARY INFORMATION portion of the document. In the dis-

cussion of the effective date of the final regulations in relation to previously-published final regulations regarding country of origin rules for textile products, reference was inadvertently made to July 1, 1996, thus creating some confusion since the EFFECTIVE DATE portion of T.D. 96–48 specified August 5, 1996. In addition, four Harmonized Tariff Schedule of the United States (HTSUS) heading or subheading references were inadvertently omitted from the list of conforming changes made to the regulatory texts to reflect the 1996 version of the HTSUS.

Two errors also appeared in the final regulatory texts in the table under § 102.20 which sets forth the specific rules by tariff classification. First, in the second tariff shift rule for subheading 2836.99, the words "other than to bismuth carbonate" were omitted, with the result that the rule as published overlaps with the first tariff shift rule for that subheading and thus does not properly reflect the changes made in the 1996 HTSUS. Second, the final regulatory texts inadvertently failed to implement a proposal, set forth in a document published in the Federal Register on May 5, 1995 (60 FR 22312), to remove the Note to Section XVI which, as stated in that May 5, 1995, document, would no longer be necessary in view of a proposed change to § 102.17(e) that was adopted in the final regulatory texts.

CORRECTIONS OF PUBLICATION

Accordingly, the document published in the Federal Register as T.D. 96–48 on June 6, 1996 (61 FR 28932) is corrected as set forth below.

Corrections to the Background Section:

1. On page 28934, in the first column in the second full paragraph, in the second sentence, the words "will take effect on July 1, 1996, when" are corrected to read "will not take effect before".

2. On page 28934, in the third column under the heading "Changes to Conform to 1996 HTSUS", after the colon in the third sentence, the reference "1517.90," is added after "0901.90,".

3. On page 28935, in the first column, the references "8545.11, 8547.90, 8548," are added at the end of the first line after "8543.40–8543.89,".

Corrections to the Final Regulations:

4. On page 28961, in the "Tariff shift and/or other requirements" column opposite the "HTSUS" column listing for 2836.99, in the second tariff shift rule, the words "other than to bismuth carbonate" are added after the words "A change to subheading 2836.99".

5. On page 28971, the Note to Section XVI is removed.

Dated: June 26, 1996.

STUART P. SEIDEL,
Assistant Commissioner,
Office of Regulations and Rulings.

[Published in the Federal Register, June 6, 1996 (61 FR 28932)]

(T.D. 96–52)

FOREIGN CURRENCIES

QUARTERLY RATES OF EXCHANGE: JULY 1 THROUGH SEPTEMBER 30, 1996

The table below lists rates of exchange, in United States dollars for certain foreign currencies, which are based upon rates certified to the Secretary of the Treasury by the Federal Reserve of New York under provisions of 31 U.S.C. 5151, for the information and use of Customs officers and others concerned pursuant to Part 159, Subpart C, Customs Regulations (19 CFR 159, Subpart C).

Country	Name of currency	U.S. dollars
Australia	Dollar	$0.787200
Austria	Schilling	0.093240
Belgium	Franc	0.031888
Brazil	Cruzado	0.995025
Canada	Dollar	0.733407
China, P.R.	Renminbi yuan	0.119880
Denmark	Krone	0.170329
Finland	Markka	0.214592
France	Franc	0.194062
Germany	Deutsche mark	0.656168
Hong Kong	Dollar	0.129186
India	Rupee	0.028490
Iran	Rial	N/A
Ireland	Pound	1.599000
Israel	Skekel	N/A
Italy	Lira	0.000652
Japan	Yen	0.009127
Malaysia	Dollar	0.401204
Mexico	Peso	0.131449
Netherlands	Guilder	0.585138
New Zealand	Dollar	0.684600
Norway	Krone	0.153799
Philippines	Peso	N/A
Portugal	Escudo	0.006379
Singapore	Dollar	0.708466
South Africa, Republic of	Rand	0.230814
Spain	Peseta	0.007803
Sri Lanka	Rupee	0.018018
Sweden	Krona	0.150319
Switzerland	Franc	0.800320
Thailand	Baht (tical)	0.039401
United Kingdom	Pound	1.554500
Venezuela	Bolivar	0.002127

Dated: July 1, 1996.

FRANK CANTONE,
Chief,
Customs Information Exchange.

(T.D. 96–53)

FOREIGN CURRENCIES

DAILY RATES FOR COUNTRIES NOT ON QUARTERLY LIST FOR JUNE 1996

The Federal Reserve Bank of New York, pursuant to 31 U.S.C. 5151, has certified buying rates for the dates and foreign currencies shown below. The rates of exchange, based on these buying rates, are published for the information and use of Customs officers and others concerned pursuant to Part 159, Subpart C, Customs Regulations (19 CFR 159, Subpart C).

Holiday: None.

Greece drachma:	
June 1, 1996	$0.004141
June 2, 1996	.004141
June 3, 1996	.004146
June 4, 1996	.004138
June 5, 1996	.004133
June 6, 1996	.004131
June 7, 1996	.004127
June 8, 1996	.004127
June 9, 1996	.004127
June 10, 1996	.004124
June 11, 1996	.004124
June 12, 1996	.004121
June 13, 1996	.004111
June 14, 1996	.004131
June 15, 1996	.004131
June 16, 1996	.004131
June 17, 1996	.004153
June 18, 1996	.004162
June 19, 1996	.004150
June 20, 1996	.004146
June 21, 1996	.004132
June 22, 1996	.004132
June 23, 1996	.004132
June 24, 1996	.004131
June 25, 1996	.004131
June 26, 1996	.004135
June 27, 1996	.004149
June 28, 1996	.004155
June 29, 1996	.004155
June 30, 1996	.004155
South Korea won:	
June 1, 1996	$0.001269
June 2, 1996	.001269
June 3, 1996	.001273
June 4, 1996	.001271
June 5, 1996	.001271
June 6, 1996	.001271
June 7, 1996	.001270
June 8, 1996	.001270
June 9, 1996	.001270
June 10, 1996	.001265
June 11, 1996	.001262
June 12, 1996	.001258

FOREIGN CURRENCIES—Daily rates for countries not on quarterly list for June 1996 (continued):

South Korea won (continued):

June 13, 1996	$0.001253
June 14, 1996	.001256
June 15, 1996	.001256
June 16, 1996	.001256
June 17, 1996	.001252
June 18, 1996	.001253
June 19, 1996	.001251
June 20, 1996	.001239
June 21, 1996	.001239
June 22, 1996	.001239
June 23, 1996	.001239
June 24, 1996	.001232
June 25, 1996	.001233
June 26, 1996	.001236
June 27, 1996	.001236
June 28, 1996	.001232
June 29, 1996	.001232
June 30, 1996	.001232

Taiwan N.T. dollar:

June 1, 1996	$0.036127
June 2, 1996	.036127
June 3, 1996	.036114
June 4, 1996	.036023
June 5, 1996	.036010
June 6, 1996	.036114
June 7, 1996	.036062
June 8, 1996	.036062
June 9, 1996	.036062
June 10, 1996	.036049
June 11, 1996	.036036
June 12, 1996	.036049
June 13, 1996	.036153
June 14, 1996	.036219
June 15, 1996	.036219
June 16, 1996	.036219
June 17, 1996	.036140
June 18, 1996	.036166
June 19, 1996	.036166
June 20, 1996	.036166
June 21, 1996	.036206
June 22, 1996	.036206
June 23, 1996	.036206
June 24, 1996	.036193
June 25, 1996	.036114
June 26, 1996	.036179
June 27, 1996	.036232
June 28, 1996	.036298
June 29, 1996	.036298
June 30, 1996	.036298

Dated: July 1, 1996.

FRANK CANTONE,
Chief,
Customs Information Exchange.

(T.D. 96–55)

FOREIGN CURRENCIES

VARIANCES FROM QUARTERLY RATES FOR JUNE 1996

The following rates of exchange are based upon rates certified to the Secretary of the Treasury by the Federal Reserve Bank of New York, pursuant to 31 U.S.C. 5151, and reflect variances of 5 per centum or more from the quarterly rates published in Treasury Decision 96–40 for the following countries. Therefore, as to entries covering merchandise exported on the dates listed, whenever it is necessary for Customs purposes to convert such currency into currency of the United States, conversion shall be at the following rates.

Holiday: None.

South Africa, Republic of, rand:

June 1, 1996	$0.235710
June 2, 1996	.235710
June 3, 1996	.229753
June 4, 1996	.228311
June 5, 1996	.228781
June 6, 1996	.229621
June 7, 1996	.228964
June 8, 1996	.228964
June 9, 1996	.228964
June 10, 1996	.229621
June 11, 1996	.229779
June 12, 1996	.231000
June 13, 1996	.231481
June 14, 1996	.229489
June 15, 1996	.229489
June 16, 1996	.229489
June 17, 1996	.230150
June 18, 1996	.229885
June 19, 1996	.229568
June 20, 1996	.229095
June 21, 1996	.228964
June 22, 1996	.228964
June 23, 1996	.228964
June 24, 1996	.229463
June 25, 1996	.229621
June 26, 1996	.230947
June 27, 1996	.230468
June 28, 1996	.230787
June 29, 1996	.230787
June 30, 1996	.230787

Switzerland franc:

June 4, 1996	$0.794786
June 5, 1996	.795292
June 6, 1996	.793021
June 7, 1996	.789391
June 8, 1996	.789391
June 9, 1996	.789391
June 10, 1996	.789702
June 11, 1996	.788706

FOREIGN CURRENCIES—Variances from quarterly rates for June 1996 (continued):

Switzerland franc (continued):

June 12, 1996	$0.790889
June 13, 1996	.794281
June 21, 1996	.791327
June 22, 1996	.791327
June 23, 1996	.791327
June 24, 1996	.792519
June 25, 1996	.792707
June 26, 1996	.794281

Venezuela bolivar:

June 1, 1996	$0.002122
June 2, 1996	.002122
June 3, 1996	.002122
June 4, 1996	.002122
June 5, 1996	.002122
June 6, 1996	.002116
June 7, 1996	.002113
June 8, 1996	.002113
June 9, 1996	.002113
June 10, 1996	.002114
June 11, 1996	.002112
June 12, 1996	.002114
June 13, 1996	.002116
June 14, 1996	.002116
June 15, 1996	.002116
June 16, 1996	.002116
June 17, 1996	.002121
June 18, 1996	.002120
June 19, 1996	.002121
June 20, 1996	.002120
June 21, 1996	.002121
June 22, 1996	.002121
June 23, 1996	.002121
June 24, 1996	.002123
June 25, 1996	.002122
June 26, 1996	.002131
June 27, 1996	.002131
June 28, 1996	.002129
June 29, 1996	.002129
June 30, 1996	.002129

Dated: July 1, 1996.

FRANK CANTONE,
Chief,
Customs Information Exchange.

U.S. Customs Service

General Notices

COPYRIGHT, TRADEMARK, AND TRADE NAME RECORDATIONS

(No. 6–1996)

AGENCY: U.S. Customs Service, Department of the Treasury.

SUMMARY: The copyrights, trademarks, and trade names recorded with the U.S. Customs Service during the month of June 1996 follow. The last notice was published in the CUSTOMS BULLETIN on June 26, 1996.

Corrections or information to update files may be sent to U.S. Customs Service, IPR Branch, 1301 Constitution Avenue, N.W., (Franklin Court), Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: John F. Atwood, Chief, Intellectual Property Rights Branch, (202) 482–6960.

Dated: July 10, 1996.

JOHN F. ATWOOD,
Chief,
Intellectual Property Rights Branch.

The list of recordations follow:

07/01/96
12:08:50

U.S. CUSTOMS SERVICE
IPR RECORDATIONS ADDED IN JUNE 1996

REC NUMBER	EFF DT	EXP DT	NAME OF COP, TMK, TNM OR MSK	OWNER NAME
COP9600150	19960605	20160605	NETHARE 3.12	NOVELL INC.
COP9600151	19960605	20160605	LOOK OF THE GAMES-PICTOGRAMS	ATLANTA COMMITTEE FOR THE
COP9600152	19960605	20160605	MYST (MACINTOSH) COMPUTER PROGRAM	CYAN INC.
COP9600153	19960605	20160605	EVIL EYES NOVELTY LIGHT	DOPPLER INC.
COP9600154	19960605	20160605	R. U. NUTS COLLECTION	LORD HOWARDS INC.
COP9600155	19960611	20160611	KING COBRA	EDWARD T. MASTERSON
COP9600156	19960621	20160621	SCHNEEBERGER SKIER	O.M.A. INC.
COP9600157	19960621	20160621	ENCHANTED ROSE	INTERNATIONAL SILVER COMPA
COP9600158	19960621	20160621	SNOWMAN	O.M.A. INC.
COP9600159	19960621	20160620	MONARCH (MANNINGTON CLASSIC)	MANNINGTON MILLS INC.
COP9600160	19960621	20160621	LAN WORKPLACE 5 FOR MS WINDOWS AND DOS	NOVELL INC.
COP9600161	19960621	20160621	GROUPWISE VERSION 4.1 FOR WINDOWS	NOVELL INC.
COP9600162	19960621	20160618	KEROKEROKEROPI	SANRIO COMPANY LTD.
COP9600163	19960621	20160618	POCHACO	SANRIO COMPANY LTD.
COP9600164	19960621	20160618	AHIRU NO PEKKLE	SANRIO COMPANY LTD.
COP9600165	19960621	20160621	TAG NO. 072	FOREE HUNSICKER INC.
COP9600166	19960621	20160620	INSTRUCTIONS FOR INSTALLING LEVER HANDLE SET	HYUNDAE METAL CO., LTD.
COP9600167	19960621	20160621	SEE'N SAY TALKING PICTURES TOY	MATTEL INC.
COP9600168	19960621	20160621	MYST 1.0 FOR WINDOWS (MPC)	BRODERBUND SOFTWARE INC.
COP9600169	19960624	20160624	MEGA MOUTH HARP'R PACKAGING	YES! ENTERTAINMENT CORPORA
COP9600170	19960624	20160624	YAK BAK 2 PACKAGING	YES! ENTERTAINMENT CORPORA
COP9600171	19960624	20160624	YAK BAK PACKAGING	YES! ENTERTAINMENT CORPORA
COP9600172	19960624	20160624	RABBIT 9312	SILVERLIT TOYS MANUFACTORY
COP9600173	19960624	20160624	SCORP BUSTER 9540	SILVERLIT TOYS MANUFACTORY
COP9600174	19960624	20160624	MOSQ BUSTER 9538	SILVERLIT TOYS MANUFACTORY
COP9600175	19960624	20160624	THE YEARLING	NORTON BASKIN REVOCABLE TR
COP9600176	19960624	20160624	THE YEARLING	NORTON BASKIN REVOCABLE TR
COP9600177	19960624	20160624	WHEN THE WHIPOORWELL	NORTON BASKIN REVOCABLE TR
COP9600178	19960624	20160624	SOUTH MOON UNDER	NORTON BASKIN REVOCABLE TR
COP9600179	19960624	20160624	THE SOJOURNER	NORTON BASKIN REVOCABLE TR
COP9600180	19960624	20160624	GOLDEN APPLES	NORTON BASKIN REVOCABLE TR
COP9600181	19960624	20160624	CROSS CREEK COOKERY	NORTON BASKIN REVOCABLE TR
COP9600182	19960624	20160624	CROSS CREEK	NORTON BASKIN REVOCABLE TR
COP9600183	19960628	20160628	SHOE BUGGY 9541	SILVERLIT TOYS MANUFACTURY
COP9600184	19960628	20160628	JOYFUL PONY 9326	SILVERLIT TOYS MANUFACTURY
COP9600185	19960628	20160628	LOVELY COW 9324	SILVERLIT TOYS MANUFACTURY
COP9600186	19960628	20160628	TENDER DUCK 9322	SILVERLIT TOYS MANUFACTURY
SUBTOTAL RECORDATION TYPE			37	
TMK9600425	19960605	20060313	TOOTSIE ROLL AND DESIGN	TOOTSIE ROLL INDUSTRIES
TMK9600426	19960605	20040215	MYST	CYAN INC.
TMK9600428	19960605	20080906	MURPHY'S	MURPHY'S LTD.
TMK9600429	19960605	20020922	SS	STUART SPECTOR DESIGNS
TMK9600430	19960605	20050722	M	BRIAN MOORE
TMK9600431	19960605	20020915	SPAM	HORMEL FOODS CORPORATION
TMK9600432	19960605	20080802	SPAM	HORMEL FOODS CORPORATION
TMK9600433	19960605	20050822	HORMEL	HORMEL FOODS CORPORATION
TMK9600434	19960605	20030406	ANNALEE	ANNALEE MOBILITEE DOLLS IN

U.S. CUSTOMS SERVICE
IPR RECORDATIONS ADDED IN JUNE 1996

REC NUMBER	EFF DT	EXP DT	NAME OF COP, TMK, TNM OR MSK	OWNER NAME
TMK9600435	19960605	20010219	LEARNING LINKS INC.	LEARNING LINKS INC.
TMK9600436	19960610	20051010	SOLE MATES	SUSAN DUNN INC.
TMK9600437	19960621	20041004	ZYTNIA	STAWSKI DISTRIBUTING CO.,
TMK9600438	19960621	20040405	GILDAN	GILDAN ACTIVEWEAR INC.
TMK9600439	19960621	20060310	FROM THE RECIPE OF A NOBLEMAN IN THE COUNTY	LEA & PERRINGS, INC.
TMK9600440	19960621	20040531	VISIO	VISIO CORPORATION
TMK9600441	19960621	20051024	FEDEX LOGO	FEDERAL EXPRESS CORPORATIO
TMK9600442	19960621	20041225	FEDEX	FEDERAL EXPRESS CORPORATIO
TMK9600443	19960621	20031023	FEDERAL EXPRESS	FEDERAL EXPRESS CORPORATIO
TMK9600444	19960621	20050901	THE WORLD ON TIME	FEDERAL EXPRESS CORPORATIO
TMK9600445	19960621	20041108	PEPE JEANS LONDON	PEPE (U.K.) LTD.
TMK9600446	19960621	20020227	SURRETTE	EXIDE CORPORATION
TMK9600447	19960621	20030518	BEE FRONT PANEL DESIGN	THE UNITED STATES PLAYING
TMK9600448	19960621	20030928	AVIATOR FRONT PANEL DESIGN	THE UNITED STATES PLAYING
TMK9600449	19960621	19981223	TRINE	FRED M. SCHLIDWACHTER & SO
TMK9600450	19960621	20050801	HACEB AND DEVICE	INDUSTRIAS HACEB S.A.
TMK9600451	19960621	20060402	LUTECE (STYLIZED LETTERING)	MOUBIGANT INC.
TMK9600452	19960624	20090704	RABBIT WITH BLUE JACKET	FREDERICK WARNE & COMPANY
TMK9600453	19960624	20080322	NOODLE PACKAGING LOGO	TAI WING HONG IMPORTER INC
TMK9600454	19960624	20070721	R WITH DESIGN	REXAIR INC.
TMK9600455	19960624	20021020	LOGO ATHLETIC & DESIGN	LOGO 7, INC.
TMK9600456	19960624	20030330	LOGO ATHLETIC	LOGO 7, INC.
TMK9600457	19960624	20080913	LOGO 7 & DESIGN	LOGO 7, INC.
TMK9600458	19960624	20021228	LOGO 7	LOGO 7, INC.
SUBTOTAL RECORDATION TYPE		33		
TNM9600001	19960605	99999999	MEGA TOYS	P.C. HOO, DBA MEGA TOYS
SUBTOTAL RECORDATION TYPE		1		
TOTAL RECORDATIONS ADDED THIS MONTH		71		

ENTRY OF CERTAIN GOODS ASSEMBLED ABROAD FROM COMPONENTS CUT TO SHAPE IN THE U.S. FROM FOREIGN FABRIC

AGENCY: U.S. Customs Service.

ACTION: General notice.

SUMMARY: This document sets forth instructions for the proper entry under the Harmonized Tariff Schedule of the United States of certain goods assembled abroad from components cut to shape in the U.S. from foreign fabric.

FOR FURTHER INFORMATION CONTACT: Craig Walker, Special Classification and Marking Branch, Office of Regulations and Rulings (202–482–6980).

SUPPLEMENTARY INFORMATION:

BACKGROUND

1. *Entry of Section 334(b)(4)(A) Goods Under 9802.00.8065:*

Section 10.25, Customs Regulations (19 CFR 10.25) implements section 334(b)(4)(A) of the Uruguay Round Agreements Act ("the Act") (codified at 19 U.S.C. 3592), which provides that where components are cut to shape in the U.S. from foreign fabric and exported to another country for assembly into an article that is returned to the U.S. and entered, or withdrawn from warehouse, for consumption on or after July 1, 1996, the dutiable value of the article shall not include the value of such components. In the final rule document implementing the provisions of section 334 of the Act, published in the Federal Register on September 5, 1995 (60 FR 46188), Customs stated the following regarding 19 CFR 10.25:

> Under section 334(b)(4), where goods are assembled abroad from components cut in the United States from foreign fabric (even though under section 334 the cut components are not products of the United States and the assembling country is the country of origin), the assembled goods, when imported into the United States, will continue to receive the same duty treatment presently accorded to such goods under subheading 9802.00.80, HTSUS. * * * section 334(b)(4) serves to preserve a tariff treatment that otherwise would no longer be available under the section 334 origin rules * * *.

Section 10.25 incorporates by reference the same operational, valuation, and documentation requirements applicable to goods entered under subheading 9802.00.80, HTSUS. Accordingly, in promulgating 19 CFR 10.25, Customs expressed its intent to continue to allow entry of these goods under subheading 9802.00.80, on and after July 1, 1996. Thus, imported goods entitled to a duty allowance under 19 CFR 10.25 are to be entered under subheading 9802.00.8065, HTSUS, and, solely for purposes of calculating the duty allowance under this subheading,

Customs will treat these textile components as if they were "U.S. fabricated components".

It is important to note, however, that permitting the entry of section 10.25 goods under subheading 9802.00.8065, in order to implement the duty allowance provided under section 334(b)(4)(A) of the Act, should not be interpreted as a determination of the country of origin of these cut components. The determination of the country of origin of textile components cut in the U.S. from foreign fabric will be made under a general application of the section 334 rules of origin, as implemented by section 102.21, Customs Regulations (19 CFR 102.21).

Thus, it is possible that a shipment of assembled goods will be eligible for a partial duty allowance under subheading 9802.00.8065 pursuant to 10.25, but the country of origin of those goods, for quota, marking and other general origin purposes, will be neither the country of assembly nor the U.S. because the origin of the assembled goods is determined by the origin of the fabric comprising the goods. For example, if Indian-origin fabric is dyed, printed and cut to shape in the U.S. into components for a tent, and those components are assembled in Mexico into a tent, the country of origin of that tent, pursuant to section 334(b)(1) or (2) of the Act, is the origin of the fabric—India. Upon importation into the U.S., the tent may receive a duty allowance under 19 CFR 10.25 for the value of the fabric components, but it will be a product of India for purposes of marking (and quota if applicable).

2. *Entry of Section 334(b)(4)(B) Goods Under 9802.00.8040:*

U.S. Note 2(b), subchapter II, Chapter 98, HTSUS ("Note 2(b)") (commonly referred to as "CBI II"), provides for the duty-free treatment of articles (except textile and apparel products, petroleum and petroleum products) assembled or processed in a designated CBI beneficiary country in whole of U.S.-origin components or ingredients (other than water).

Headquarters telex No. 9264071 to Customs field offices dated September 28, 1990, set forth instructions regarding the proper entry of goods entitled to duty-free treatment under Note 2(b). Specifically, the telex advised that two statistical breakouts had been created for Note 2(b) articles: subheading 9802.00.5010, HTSUS—for articles processed in whole of U.S. ingredients (other than water); and subheading 9802.00.8040, HTSUS—for articles assembled in whole of U.S. fabricated components.

Section 10.26(b), Customs Regulations (19 CFR 10.26(b)), implements section 334(b)(4)(B) of the Act, which provides that, effective for goods entered, or withdrawn from warehouse, for consumption on or after July 1, 1996, no article (except a textile or apparel product) assembled in whole of components cut to shape in the U.S. from foreign fabric, or of such components and components of U.S. origin, in a designated CBI beneficiary country shall be treated as a foreign article or as subject to duty. Thus, through the promulgation of 19 CFR 10.26(b),

Customs has fulfilled Congressional intent to continue the duty-free treatment accorded such articles under Note 2(b) prior to July 1, 1996.

In keeping with the overall statutory intent, as expressed in 19 CFR 10.26(b), Customs has determined that imported goods entitled to duty-free treatment under 19 CFR 10.26(b) should continue to be entered under subheading 9802.00.8040, HTSUS. All other instructions and documentation requirements set forth in telex No. 9264071 shall also continue to apply to such articles.

Dated: July 8, 1996.

STUART P. SEIDEL,
Assistant Commissioner,
Office of Regulations and Rulings.

INTERIM LIST OF RECORDS REQUIRED TO BE MAINTAINED AND PRODUCED PURSUANT TO 19 U.S.C. 1509(a)(1)(A)

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: General notice.

SUMMARY: This document sets forth for the information of the general public the text of a document that was previously published in the CUSTOMS BULLETIN on January 3, 1996 concerning a list of records or entry information required to be maintained and produced under section 509(a)(1)(A) of the Tariff Act of 1930, as amended by Title VI of the North American Free Trade Agreement Implementation Act.

FOR FURTHER INFORMATION CONTACT: Stuart P. Seidel, Assistant Commissioner, Office of Regulations and Rulings at (202) 482–6920 or William Inch, Director, Office of Regulatory Audit at (202) 927–1100.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, the President signed the North American Free Trade Agreement Implementation Act (Pub. L. 103–182). Title VI of the Act is entitled "Customs Modernization" and is popularly known as the Customs Modernization Act. Section 615 of the Customs Modernization Act amends § 509(a)(1)(A) of the Tariff Act of 1930 (19 U.S.C. 1509(a)(1)(A)) to require the maintenance and production of a record if "such record is required by law or regulation for the entry of merchandise (whether or not the Customs Service required its presentation at the time of entry)." Section 509 was further amended by adding a new subsection (e) which requires the Customs Service to identify and publish a list of records or entry information that is required to be main-

tained and produced under § 509(a)(1)(A)—commonly referred to as "the (a)(1)(A) list." In their respective discussions of section 615, both the House Report and Senate Report on the North American Free Trade Agreement Implementation Act indicate that the requirement to publish the (a)(1)(A) list refers to publication in the CUSTOMS BULLETIN. On January 3, 1996, Customs published the (a)(1)(A) list in the CUSTOMS BULLETIN.

This publication of the (a)(1)(A) list in the Federal Register is for the information of the general public.

Dated: July 9, 1996.

STUART P. SEIDEL,
Assistant Commissioner,
Office of Regulations and Rulings.

Accordingly, the document setting forth the (a)(1)(A) list, as discussed above, is reproduced below:

(T.D. 96–1)

INTERIM LIST OF RECORDS REQUIRED TO BE MAINTAINED AND PRODUCED PURSUANT TO 19 U.S.C. § 1509(a)(1)(A)

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Interim "(a)(1)(A) list"

SUMMARY: This document lists records (which includes, but is not limited to, any statement, declaration, document, or electronically generated or machine readable data) required by law or regulation for the entry of the merchandise (whether or not the Customs Service requires its presentation at the time of entry). Publication is required by section 509(a)(1)(A) of the Tariff Act of 1930, as amended by section 615 of Public Law 103–182 (19 U.S.C. § 1509(a)(1)(A)). This interim list addresses public comments solicited by the Proposed List which was posted on Customs Electronic Bulletin Board on September 12, 1994 and published in the CUSTOMS BULLETIN on September 21, 1994. The list is being published as an interim listing because the Customs Service is re-engineering its entry and related processes and the list is expected to change as entry requirements are revised.

EFFECTIVE DATE: Since this document merely lists records already required by law or regulation, it is effective on January 3, 1996, the date of publication in the CUSTOMS BULLETIN.

ADDRESSES: Comments should be addressed to the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, 1301 Constitution Avenue NW (Franklin Court), Washington, D.C. 20229. Comments may be inspected at the Regulations Branch, Office of Regulations and Rulings, Suite 4000W, 1099 14th Street NW, Washington, DC 20005. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), §1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), during regular business days between the hours of 9:00 a.m. and 4:30 p.m.

FOR FURTHER INFORMATION CONTACT: Stuart Seidel, Assistant Commissioner, Office of Regulations and Rulings at (202) 482–6920 or William Inch, Director, Office of Regulatory Audit at (202) 927–1100,

SUPPLEMENTARY INFORMATION:

BACKGROUND

Section 509(a)(1)(A) of the Tariff Act of 1930 (19 U.S.C. § 1509(a)(1)(A)) as amended by 615 of title VI of the North American Free Trade Agreement Implementation Act (generally referred to as the "Customs Modernization Act") requires the maintenance and production of a record if "such record is required by law or regulation for the entry of merchandise (whether or not the Customs Service required its presentation at the time of entry)." Section 509 was further amended by adding a new subsection (e) which requires the Customs Service to identify and publish a list of records or entry information that is required to be maintained and produced under section 509(a)(1)(A)—commonly referred to as "the (a)(1)(A) list." On September 12, 1994, the proposed (a)(1)(A) list was placed on the Customs Electronic Bulletin Board for public comment, followed by publication in the September 21, 1994 CUSTOMS BULLETIN. Comments were received from the following organizations or their counsel: the Air Courier Conference of America, National Customs Brokers & Forwarders Association of America, Inc., The United States Association of Importers of Textiles and Apparel, The Joint Industry Group, American Association of Exporters and Importers, U.S. Transportation Coalition, and a group of petroleum and petrochemical companies. In addition comments were received from a Customs broker, a law firm, an express consignment company and its brokerage, and a Customs office. A total of eleven comments were received. However, many of the submissions were from trade groups, or their counsel, representing hundreds of interested parties. A summary of the comments received and Customs response follows:

Comment:

One commenter opined that NAFTA records should be excluded from the (a)(1)(A) list because it would subject record keepers to the additional penalties available under 19 U.S.C. § 1509, and NAFTA exporter's records are already subject to penalties.

Customs Response:

Customs agrees that records required to be kept by U.S. exporters should be excluded from the (a)(1)(A) list (unless the same party is also an importer and is relying upon those records to claim a NAFTA preference on reimportation) since (a)(1)(A) only applies to entry records. However, Customs believes that certain other NAFTA records are entry records. The law requires a person claiming NAFTA preferences to be in possession of a NAFTA Certificate of Origin at the time the preference is claimed. Thus, when NAFTA preferences are claimed at the time of entry, the NAFTA records are entry records and properly fall within the purview of (a)(1)(A). To make this clear, the NAFTA certificate of origin and supporting records required by 19 CFR 181.22 have been specifically added to the list.

Comment:

One commenter suggested that for petroleum and petrochemical products, only the following should be required to be kept for five years: CF 7501 and related documents, purchase orders or contracts (except when made orally), invoice and payment records (including canceled checks, wire transfer evidence, inter company accounts and similar records, bills of lading or charter agreements, freight invoices, import inspection reports, etc, evidence of use (for classification where use controls), TSCA and EPA certifications.

Customs Response:

The record retention period is beyond the scope of the (a)(1)(A) list and will be addressed in a separate regulatory package. As indicated in the Background portion, Customs will consider changes in entry record requirements as Customs processes are revised. However, until those requirements are changed, the law requires that all records required for the entry of merchandise be included in the (a)(1)(A) list.

Comment:

One commenter expressed concern that the size of the (a)(1)(A) list will result in the list being a tool to penalize persons during routine audits. The commenter points out that under current practice, the failure to present certain required records results in a denial of a preference. In other cases, the record (19 CFR 10.174, for example) may be required within 60 days of entry, after which it does not appear to be required. In other cases, importation is prohibited without the required record (19 CFR 12.161 fur seal certificate).

The commenter suggested that the (a)(1)(A) list be limited to those presently required to be produced, and not routinely the subject of waivers. The commenter suggested that the entry not be accepted without a statement that the required document is in the importer's possession, because without the statement, potential third party record keepers might not be willing to undertake this responsibility since there would be no guarantee that records would be available. The commenter further suggested reducing the maintenance period from five years to not longer than liquidation of the entry.

Customs Response:

In an automated environment, Customs must be able to use a post-entry record demand to ensure that an importer's claims on entry were valid. In order to expedite the release of merchandise, Customs may initially waive production of certain required records and then verify them at a later date. This is especially true in the case of records not affecting admissibility. This fact is recognized in the law, which refers to a record which is required by law or regulation for the entry of the merchandise *whether or not the Customs Service required its presentation at the time of entry*, emphasis added. A record retention period beyond liquidation was clearly contemplated by Congress, because the statute specifically permits reliquidation and denial of claimed preferences if the record is demanded within two years of the original liquidation and is not produced. As pointed out in other comments, Customs is reviewing its entire entry process and the (a)(1)(A) list will be adjusted in the future. With regard to the penalty process, Customs intends to follow the legislative history which states, "[o]nce this listing has been made available and importers have had an opportunity to familiarize themselves with the contents, the Committee expects the person on whom a demand has been made for any of the records under section 509(a)(1)(A) of the Act will furnish them under the 'reasonable time' standard embodied in the law. The Committee also believes that Customs headquarters should exercise tight control over the imposition of record keeping penalties, and until the Customs Service gains some experience in administering this penalty, no such penalty should be issued without prior headquarters review and approval."

Comment:

One commenter was of the opinion that the (a)(1)(A) list should only contain those records required for "entry," which the commenter equates with "admission" or "release" of the merchandise. The commenter further points out that many of the documents on the list are not required for release. The commenter suggests that as electronic textile visas are introduced, importers will not have any visa documentation to produce and the (a)(1)(A) list should reflect that. The commenter also believes it is inappropriate to list documents, such as origin declarations and quota charge statements which are presented at the time of entry and retained by Customs. The commenter also believes that purchase orders and contracts are not required for entry and refers to 19 CFR 141.83 and 141.86, and therefor should be eliminated from the list. The commenter also believes that the manifest description of the goods should be stricken from the list since the carrier, not the importer is responsible for producing this to Customs. Finally, the commenter believes that the broker power of attorney should be eliminated since the record is not, in the commenter's view, required for entry.

Customs Response:

The term "entry" is used in the Customs laws and regulations in two ways. The first refers to a specific document, the "entry" form (such as consumption entry, vessel repair entry, etc); the second to a procedure, "entry of merchandise," "entry and clearance." Customs believes that the (a)(1)(A) list refers to the procedure—that is, records required to complete the entry process. Section 1484 of title 19 of the United States Code (19 U.S.C. 1484) refers to an importer using reasonable care to make entry by filing such information as is necessary to obtain release of the merchandise, and completing the entry by filing such additional information as may be necessary to enable Customs to fix the final appraisement and classification of the merchandise and insure compliance with applicable law. Thus, the scope of the (a)(1)(A) list is broader than contemplated by the commenter. This is supported by the examples listed in the legislative history which include not only any record required for admissibility, but also the following which are not required for release: a commercial invoice, a packing list, certificate of origin Form A (where a claim for a preference is made), and declarations of a foreign manufacturer. With regard to purchase orders and contracts, Customs notes that while not every importation requires such records for entry,

importations covered by sections 12.99, 10.84 and 10.183 of the Customs Regulations do require contracts. Customs has deleted purchase orders from the (a)(1)(A) list, although they must be retained and made available for examination pursuant to other provisions of 19 U.S.C. 1508 and 1509. With regard to the comment that electronic visas may be transmitted to the Customs Service, we note that the visa will still be a record required for entry and thus will have to be listed, but the importer will not be subject to penalties, since the record is transmitted to and retained by Customs, and the penalty provisions do not apply when Customs retains the record.

Comment:

Several commenters recommended that the (a)(1)(A) list be simplified, to eliminate unnecessary material, and suggest Customs review documents which are routinely waived to see if they can be eliminated. One commenter believed that the list was accurate, but far too complex. The commenter suggested a "front end" summary of which documents contain which data elements and that the list be re-structured to simplify it. Finally, several commenters suggested that the list could be clarified by referencing the documents currently required rather than the data elements or information.

Customs Response:

Customs agrees that the list should be rearranged to show which data is routinely provided to Customs on entry forms and has tried to group the records to show which ones are required by all, or most, import transactions. We agree that the list is complex, and lists some records which are not required in most import transactions, but only are required for imports of certain specific merchandise, or in certain situations. We have tried to list those situations and hope to simplify and reduce the list in the future as new procedures and regulations are implemented. The law requires that the (a)(1)(A) list contain not only documents but also data elements and other information required for entry.

Comment:

Several commenters suggested that Customs list the parties responsible for maintaining specific documents. For example, one commenter points out that carriers are responsible for the manifest under regulations issued pursuant to 19 U.S.C. 1321, but should not be responsible for the summary manifest for letters and documents and return shipments since these intangibles are, in the commenter's view exempt from entry under General Notes 13 (d), (e) of the Harmonized Tariff Schedule of the United States (HTSUS) and § 681c of the Mod Act. The commenter questions the inclusion of the vessel entry form 226 since, in the commenter's view, it does not relate to the "entry of merchandise."

Customs Response:

Whether or not an article is covered by the HTSUS is not determinative of whether the article is "merchandise" within the Tariff Act of 1930. Section 401 (19 U.S.C. 1401) defines "merchandise" as goods, wares, and chattels of every description and includes merchandise the importation of which is prohibited, and monetary instruments. Thus, returned articles and documents are in fact merchandise, albeit exempt from the HTSUS. In fact, 19 U.S.C. 1498 specifically permits the Secretary to promulgate regulations for the declaration and entry of returned merchandise. With regard to the vessel entry form, we note that while it is used to report vessel repairs, it is also used to report the entry of equipment and spare parts and is also referenced in 19 U.S.C. 1498.

Comment:

One commenter suggested that express carriers (operating under part 128, Customs Regulations) be required to keep the manifest, consolidated entry summary or its equivalent and invoices for informal entries, and the manifest, individual entry summaries or their equivalent and invoices for formal entries. The commenter did not believe that individual house airway bills and packing lists should be listed because the airway bill's data elements duplicated the manifest, and the packing lists were rarely used for express consignments. The commenter expressed the view that since express carriers have "a statutory right under 19 U.S.C. 1484 to designate their own brokers to make entry," no power of attorney was needed and it should therefor be eliminated from the (a)(1)(A) list. The commenter suggested that other federal or state agency documents should be listed. The commenter believed that the list should include (for carriers), records relating to entry for immediate transportation pursuant to 19 U.S.C. 1552, transportation and exportation pursuant to 19 U.S.C. 1553 and records relating to instruments of international traffic pur-

suant to 19 U.S.C. 1322. Several commenters pointed out that Customs Forms 3311, 4455 and Form A are no longer required (see 59 F. R. 25503) and should be removed from the (a)(1)(A) list. One commenter pointed out that since only "an owner or purchaser of the merchandise or, when appropriately designated by the owner, purchaser, or consignee of the merchandise, a person holding a valid license under section 1641" may make formal entry, carriers should not be liable for maintaining records on the (a)(1)(A) list except in limited circumstances.

Customs Response:

Customs agrees that a power of attorney is not required by a broker who is the importer of record, since in that capacity, the broker is the principal and is liable for duties, fees and taxes. However, powers of attorney, when required by the regulations, are entry records. Customs agrees that the CF 3311 and CF 4455 are no longer required for certain entries pursuant to 19 CFR 10.1(a) and 10.8 and 10.9. However, the CF 3311 and/or CF 4455 remain entry records for certain importations (see revised 19 CFR 7.8(b), 10.1 (h), (I), (j) and 10.66, 10.67, for example. The Origin Form A has been deleted from the (a)(1)(A) list for GSP and CBI importations. Customs also agrees that records required by 19 U.S.C. 1552, 1553 and 1322 are entry records and has added them to the (a)(1)(A) list.

CONCLUSION

Customs has revised the (a)(1)(A) list in accordance with the foregoing and is publishing it at this time as an interim document to allow future modifications as procedures change. The "Background" section has been renamed "General Information" and expanded and clarified. The list will also be published as an Appendix to the revised record keeping regulations when that document is published. Customs intends the importing community to familiarize themselves with the (a)(1)(A) list and expects that a person on whom a demand has been made for any of the entry records will furnish them under the "reasonable time" standard embodied in the law. Although the record keeping penalties are effective upon publication of the list, Customs headquarters will, as recommended in the legislative history, exercise tight control over the imposition of record keeping penalties, and until the Customs Service gains some experience in administering this penalty, Customs officers will not issue such a penalty without prior headquarters review and approval.

Dated: December 21, 1995.

STUART P. SEIDEL,
Assistant Commissioner,
Office of Regulations and Rulings.

INTERIM (a)(1)(A) LIST

LIST OF RECORDS REQUIRED FOR THE ENTRY OF MERCHANDISE

GENERAL INFORMATION: Section 508 of the Tariff Act of 1930, as amended (19 U.S.C. 1508), sets forth the general record keeping requirements for Customs-related activities. Section 509 of the Tariff Act of 1930, as amended (19 U.S.C. 1509) sets forth the procedures for the production and examination of those records (which includes, but is not limited to, any statement, declaration, document, or electronically generated or machine readable data).

Section 509(a)(1)(A) of the Tariff Act of 1930, as amended by title VI of Public Law 103–182, commonly referred to as the Customs Modernization Act (19 U.S.C. 1509(a)(1)(A)), requires the production, within a reasonable time after demand by the Customs Service is made (taking into consideration the number, type and age of the item demanded) if "such record is required by law or regulation for the entry of the merchandise (whether or not the Customs Service required its presentation at the time of entry)". Section 509(e) of the Tariff Act of 1930, as amended by Public Law 103–182 (19 U.S.C. 1509(e)) requires the Customs Service to identify and publish a list of the records and entry

information that is required to be maintained and produced under subsection (a)(1)(A) of section 509 (19 U.S.C. 1509 (a)(1)(A)). This list is commonly referred to as **"the (a)(1)(A) list."**

The Customs Service has tried to identify all the presently required entry information or records on the following list. However, as automated programs and new procedures are introduced, these may change. In addition, errors and omissions to the list may be discovered upon further review by Customs officials or the trade. Pursuant to section 509(g), the failure to produce listed records or information upon reasonable demand may result in penalty action or liquidation or reliquidation at a higher rate than entered. A record keeping penalty may not be assessed if the listed information or records are transmitted to and retained by Customs.

Other recordkeeping requirements: *The importing community and Customs officials are reminded that the (a)(1)(A) list only pertains to records or information required for the entry of merchandise. An owner, importer, consignee, importer of record, entry filer, or other party who imports merchandise, files a drawback claim or transports or stores bonded merchandise, any agent of the foregoing, or any person whose activities require them to file a declaration or entry, is* ***also*** *required to make, keep and render for examination and inspection records (including, but not limited to, statements, declarations, documents and electronically generated or machine readable data) which pertain to any such activity or the information contained in the records required by the Tariff Act in connection with any such activity; and are normally kept in the ordinary course of business. While these records are not subject to administrative penalties, they are subject to examination and/or summons by Customs officers. Failure to comply could result in the imposition of significant judicially imposed penalties and denial of import privileges.*

The following list does not replace entry requirements, but is merely provided for information and reference. In the case of the list conflicting with regulatory or statutory requirements, the latter will govern.

List of Records and Information Required for the Entry of Merchandise

The following records (which includes, but is not limited to, any statement, declaration, document, or electronically generated or machine readable data) are required by law or regulation for the entry of merchandise and are required to be maintained and produced to Customs upon reasonable demand (whether or not Customs required its presentation at the time of entry). Information may be submitted to Customs at time of entry in a Customs authorized electronic or paper format. Not every entry of merchandise requires all of the following information. Only those records or information applicable to the entry requirements for the merchandise in question will be required/mandatory. The list may be amended as Customs reviews its requirements and continues to implement the Customs Modernization Act. When a record or information is filed with and retained by Customs, the record is not subject to record keeping penalties, although the underlying backup or supporting information from which it is obtained may also be subject to the general record retention regulations and examination or summons pursuant to 19 U.S.C. 1508 and 1509.

(All references, unless otherwise indicated, are to title 19, Code of Federal Regulations, April 1, 1995 Edition, as amended by subsequent Federal Register notices.)

I. General list or records required for most entries. Information shown with an asterisk (*) is usually on the appropriate form and filed with and retained by Customs:

141.11–.15	Evidence of right to make entry (airway bill/bill of lading or *carrier certificate, etc.) when goods are imported on a common carrier.
141.19	*Declaration of entry (usually contained on the entry summary or warehouse entry)
141.32	Power of attorney (when required by regulations)
141.54	Consolidated shipments authority to make entry (if this procedure is utilized)
142.3	Packing list (where appropriate)
142.4	Bond information (except if 10.101 or 142.4(c) applies)
Parts 4, 18, 122, 123	*Vessel, Vehicle or Air Manifest (filed by the carrier)

II. The following records or information are required by 141.61 on Customs Form (CF) 3461 or CF 7533 or the regulations cited. Information shown with an asterisk (*) is contained on the appropriate form and/or otherwise filed with and retained by Customs:

142.3, .3a	*Entry Number *Entry Type Code *Elected Entry Date *Port Code
142.4	*Bond information
141.61, 142.3a	*Broker/Importer Filer Number
141.61, 142.3	*Ultimate Consignee Name and Number /street address of premises to be delivered
141.61	*Importer of Record Number *Country of Origin
141.11	*IT/BL/AWB Number and Code *Arrival Date
141.61	*Carrier Code *Voyage/Flight/Trip *Vessel Code/Name *Manufacturer ID Number (for AD/CVD must be actual mfr.) *Location of Goods-Code(s)/Name(s) *U.S. Port of Unlading *General Order Number (only when required by the regulations)
142.6	*Description of Merchandise
142.6	*HTSUSA Number
142.6	*Manifest Quantity *Total Value *Signature of Applicant

III. In addition to the information listed above, the following records or items of information are required by law and regulation for the entry of merchandise and are presently required to be produced by the importer of record at the time the Customs Form 7501 is filed.

141.61	*Entry Summary Date
141.61	*Entry Date
142.3	*Bond Number, Bond Type Code and Surety code
142.3	*Ultimate Consignee Address
141.61	*Importer of Record Name and Address
141.61	*Exporting Country and Date Exported *I.T. (In-bond) Entry Date (for IT Entries only) *Mode of Transportation (MOT Code)
141.61	*Importing Carrier Name
141.82	Conveyance Name/Number *Foreign Port of Lading *Import Date and Line Numbers *Reference Number *HTSUS Number
141.61	*Identification number for merchandise subject to Anti-dumping or Countervailing duty order (ADA/CVD Case Number)
141.61	*Gross Weight *Manifest Quantity
141.61	*Net Quantity in HTSUSA Units
141.61	*Entered Value, Charges, and Relationship
141.61	*Applicable HTSUSA Rate, ADA/CVD Rate, I.R.C. Rate, and/or Visa Number, Duty, I.R. Tax, and Fees (e.g. HMF, MPF, Cotton)

141.61	Non-Dutiable Charges
141.61	*Signature of Declarant, Title, and Date *Textile Category Number
141.83, .86	Invoice information which includes-e.g., date, number, merchandise (commercial product) description, quantities, values, unit price, trade terms, part, model, style, marks and numbers, name and address of foreign party responsible for invoicing, kind of currency Terms of Sale Shipping Quantities Shipping Units of Measurements Manifest Description of Goods Foreign Trade Zone Designation and Status Designation (if applicable) Indication of Eligibility for Special Access Program (9802/GSP/CBI)
141.89	CF 5523
141.89, et al	Corrected Commercial Invoice
141.86 (e)	Packing List
177.8	*Binding Ruling Identification Number (or a copy of the ruling)
10.102	Duty Free Entry Certificate (9808.00.30009 HTS)
10.108	Lease Statement

IV. Documents/records or information required for entry of special categories of merchandise (The listed documents or information is only required for merchandise entered (or required to be entered) in accordance with the provisions of the sections of 19 CFR (the Customs Regulations) listed). *These are In addition to any documents/records or information required by other agencies in their regulations for the entry of merchandise:*

4.14	CF 226 Information for vessel repairs, parts and equipment
7.8(a)	CF 3229 Origin certificate for insular possessions
7.8(b)	CF 3311 and Shipper's declaration for insular possessions
Part 10	Documents required for entry of articles exported and returned:
10.1–10.6	foreign shipper's declaration or master's certificate, declaration for free entry by owner, importer or consignee
10.7	certificate from foreign shipper for reusable containers
10.8	declaration of person performing alterations or repairs declaration for non-conforming merchandise
10.9	declaration of processing
10.24	declaration by assembler endorsement by importer
10.31, .35	Documents required for Temporary Importations Under Bond: Information required, Bond or Carnet
10.36	Lists for samples, professional equipment, theatrical effects
	Documents required for Instruments of International Traffic:
10.41	Application, Bond or TIR carnet Note: additional 19 U.S.C. 1508 records: see 10.41b(e)
10.43	Documents required for exempt organizations
10.46	Request from head of agency for 9808.00.10 or 9808.00.20 HTSUS treatment
	Documents required for works of art
10.48	declaration of artist, seller or shipper, curator, etc
10.49, .52	declaration by institution
10.53	declaration by importer USFWS Form 3–177, if appropriate

10.59, .63	Documents/ CF 5125/ for withdrawal of ship supplies
10.66, .67	Declarations for articles exported and returned
10.68, .69	Documents for commercial samples, tools, theatrical effects
10.70, .71	Purebred breeding certificate
10.84	Automotive Products certificate
10.90	Master records and metal matrices: detailed statement of cost of production.
10.98	Declarations for copper fluxing material
10.99	Declaration of non-beverage ethyl alcohol, ATF permit
10.101–.102	Stipulation for government shipments and/or certification for government duty-free entries, etc.
10.107	Report for rescue and relief equipment
15 CFR 301	Requirements for entry of scientific and educational apparatus
10.121	Certificate from USIA for visual/auditory materials
10.134	Declaration of actual use (When classification involves actual use)
10.138	End Use Certificate
10.171–	Documents, etc. required for entries of GSP merchandise
10.173, 10.175	GSP Declaration (plus supporting documentation)
10.174	Evidence of direct shipment
10.179	Certificate of importer of crude petroleum
10.180	Certificate of fresh, chilled or frozen beef
10.183	Civil aircraft parts/simulator documentation and certifications
10.191–.198	Documents, etc. required for entries of CBI merchandise CBI declaration of origin (plus supporting information)
10.194	Evidence of direct shipment
†*[10.306*	*Evidence of direct shipment for CFTA]*
†*[10.307*	*Documents, etc. required for entries under CFTA Certificate of origin of CF 353]* *[†CFTA provisions are suspended while NAFTA remains in effect. See part 181]*
12.6	European Community cheese affidavit
12.7	HHS permit for milk or cream importation
12.11	Notice of arrival for plant and plant products
12.17	APHIS Permit animal viruses, serums and toxins
12.21	HHS license for viruses, toxins, antitoxins, etc for treatment of man
12.23	Notice of claimed investigational exemption for a new drug
12.26–.31	Necessary permits from APHIS, FWS & foreign government certificates when required by the applicable regulation
12.33	Chop list, proforma invoice and release permit from HHS
12.34	Certificate of match inspection and importer's declaration
12.43	Certificate of origin/declarations for goods made by forced labor, etc.
12.61	Shipper's declaration, official certificate for seal and otter skins
12.73 12.80	Motor vehicle declarations
12.85	Boat declarations(CG–5096) and USCG exemption
12.91	FDA form 2877 and required declarations for electronics products
12.99	Declarations for switchblade knives
12.104–.104i	Cultural property declarations, statements and certificates of origin

12.105–.109	Pre-Columbian monumental and architectural sculpture and murals certificate of legal exportation evidence of exemption
12.110–	Pesticides, etc. notice of arrival
12.118–.127	Toxic substances: TSCA statements
12.130	Textiles & textile products Single country declaration Multiple country declaration VISA
12.132	NAFTA textile requirements
54.5	Declaration by importer of use of use of certain metal articles
54.6(a)	Re-Melting Certificate
114	Carnets (serves as entry and bond document where applicable)
115	Container certificate of approval
128	Express consignments
128.21	*Manifests with required information (filed by carrier)
132.23	Acknowledgment of delivery for mailed items subject to quota
133.21(b)(6)	Consent from trademark or trade name holder to import otherwise restricted goods
134.25, .36	Certificate of marking; notice to repacker
141.88	Computed value information
141.89	Additional invoice information required for certain classes of merchandise including, but not limited to: *Textile Entries:* Quota charge Statement, if applicable including Style Number, Article Number and Product *Steel Entries* Ordering specifications, including but not limited to, all applicable industry standards and mill certificates, including but not limited to, chemical composition.
143.13	Documents required for appraisement entries bills, statements of costs of production value declaration
143.23	Informal entry: commercial invoice plus declaration
144.12	Warehouse entry information
145.11	Customs Declaration for Mail, Invoice
145.12	Mail entry information (CF 3419 is completed by Customs but formal entry may be required.)
148	Supporting documents for personal importations
151 subpart B	Scale Weight
151 subpart B	Sugar imports sampling/lab information (Chemical Analysis)
151 subpart C	Petroleum imports sampling/lab information Out turn Report 24. to 25.—Reserved
151 subpart E	Wool and Hair invoice information, additional documents
151 subpart F	Cotton invoice information, additional documents
181.22	NAFTA Certificate of origin and supporting records
19 USC 1356k	*Coffee Form O (currently suspended)*

Other Federal and State Agency Documents:

State and Local Government Records
Other Federal Agency Records (See 19 CFR Part 12, 19 U.S.C. 1484, 1499)
Licenses, Authorizations, Permits

Foreign Trade Zones:

146.32	Supporting documents to CF 214

[Published in the Federal Register, July 15, 1996 (61 FR 36959)]

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, DC, July 3, 1996.

The following documents of the United States Customs Service, Office of Regulations and Rulings, have been determined to be of sufficient interest to the public and U.S. Customs Service field offices to merit publication in the CUSTOMS BULLETIN.

JOHN B. ELKINS,
(for Stuart P. Seidel, Assistant Commissioner,
Office of Regulations and Rulings.)

PROPOSED REVOCATION OF CUSTOMS RULING LETTER RELATING TO TARIFF CLASSIFICATION OF AN INFLATABLE BALL PIT MOUNTAIN

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of proposed revocation of tariff classification ruling letter.

SUMMARY: Pursuant to section 625, Tariff Act of 1930 (19 U.S.C. 1625), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub.L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs intends to revoke New York Ruling Letter (NYRL) A81066, dated April 3, 1996, concerning the classification of an inflatable Ball Pit Mountain.

DATE: Comments must be received on or before August 23, 1996.

ADDRESS: Written comments (preferably in triplicate) are to be addressed to U.S. Customs Service, Office of Regulations and Rulings, Tariff Classification Division, 1301 Constitution Avenue, N.W. (Franklin Court Building), Washington, D.C. 20229. Comments submitted may be inspected at the Office of Regulations and Rulings, located at Franklin Court, 1099 14th Street, N.W., Suite 4000, Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Norman W. King, Food and Chemicals Classification Branch, Office of Regulations and Rulings (202) 482–7097.

SUPPLEMENTARY INFORMATION:

BACKGROUND

Pursuant to section 625, Tariff Act of 1930 (19 U.S.C 1625), as amended by section 623 of Title VI (Customs Modernization) of the

North American Free Trade Agreement Implementation Act (Pub.L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs intends to revoke a ruling pertaining to the tariff classification of an inflatable Ball Pit Mountain.

NYRL A81066, dated April 3, 1996, held that certain merchandise referred to as an inflatable Ball Pit Mountain was classified as other articles of plastics and articles of other material of headings 3901 to 3914: Pneumatic mattresses and other inflatable articles, not elsewhere specified or included, in subheading 3926.90.7500, Harmonized Tariff Schedule of the United States (HTSUS) with duty at the general rate of 4.2 percent *ad valorem*. Customs intends to revoke NYRL A81066, Attachment A to this document, to reflect the proper classification under the provision for other toys (except models), not having a spring mechanism, in subheading 9503.90.0030, HTSUS, free of duty.

Before taking this action, consideration will be given to any written comments timely received. Proposed HRL 959196, revoking NYRL A81066 and classifying the product in subheading 9503.90.0030, HTSUS, is set forth in Attachment B to this document.

Claims for detrimental reliance under section 177.9, Customs Regulations (19 CFR 177.9), will not be entertained for actions occurring on or after the date of publication of this notice.

Dated: June 25, 1996.

JOHN B. ELKINS,
(for John Durant, Director,
Tariff Classification Appeals Division.)

[Attachments]

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
New York, NY, April 3, 1996.
CLA–2–94:RR:NC:FC 233 A81066
Category: Classification
Tariff No. 3926.90.7500

MR. LAWRENCE R. PILON
HODES & PILON
33 North Dearborn Street
Suite 2204
Chicago, IL 60602–3109

Re: The tariff classification of a children's inflatable "Ball Pit Mountain" from China.

DEAR MR. PILON:

In your letter dated March 4, 1996, you requested a tariff classification ruling.

The submitted sample depicts the item as an inflatable "Ball Pit Mountain", Model #8–651, that is constructed of vinyl material. The "Ball Pit Mountain" is in the shape of a small hollow mountain with five openings: four "cave mouths", one on each of the four sides of the mountain, and one "volcano" like hole in the top of the mountain.

The applicable subheading for the children's inflatable "Ball Pit Mountain" will be 3926.90.7500, Harmonized Tariff Schedule of the United States (HTS), which provides for: Other articles of plastics and articles of other material of headings 3901 to 3914: Pneu-

matic mattresses and other inflatable articles, not elsewhere specified or included. The rate of duty will be 4.2 percent *ad valorem*.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 CFR 177).

A copy of this ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Lawrence Mushinske at 212–466–5739.

ROGER J. SILVESTRI,
Director,
National Commodity Specialist Division.

[ATTACHMENT B]

DEPARTMENT OF THE TREASURY,
U.S. Customs Service,
Washington, DC.
CLA–2 RR:TC:FC 959196K
Category: Classification
Tariff No. 9503.90.0030

LAWRENCE R. PILON, ESQ.
HODES & PILON
33 North Dearborn Street
Suite 2204
Chicago, IL 60602–3109

Re: Tariff classification of inflatable Ball Pit Mountain; revocation of New York Ruling Letter (NYRL) A81066.

DEAR SIR:

In response to your letter of March 4, 1996, on behalf of Hedstrom Corporation, the Customs Service issued NYRL, A81066, dated April 3, 1996, which held that certain merchandise referred to as an inflatable Ball Pit Mountain was classified as other articles of plastics and articles of other material of headings 3901 to 3914: Pneumatic mattresses and other inflatable articles, not elsewhere specified or included, in subheading 3925.90.7500, Harmonized Tariff Schedule of the United States (HTSUS) with duty at the general rate of 4.2 percent *ad valorem*. In your letter of April 30, 1995, you opined that the merchandise is classified under the provision for other toys, (except models), not having a spring mechanism, in subheading 9503.90.0030, HTSUS, free of duty and requested that we reconsider, modify, or revoke the ruling. This letter is to inform you that NYRL A81066 no longer reflects the views of the Customs Service. The following represents our position.

Facts:

The merchandise, ref erred to as the Ball Pit Mountain, model number 8–651, is made of heavy-duty vinyl which, when inflated, creates a hollow cone shape mountain. In the center of each of the four sides is an opening large enough for a young child to climb into and out of the article. The top of the cone shaped mountain is also opened and along with the other four openings, the inside of the article is exposed to the elements. There is no means to close the openings and there are no pegs or poles involved with the article. A sample was not submitted but a brochure was submitted. The dimensions were not provided. The brochure states that the article can accommodate up to 4 children ages two and up and it is big enough for adults. After importation, the Ball Pit Mountain is packaged with 200 multicolored 3″ hollow plastic balls. The balls are intended to be inserted on the floor of the article.

Issue:

The issue is whether the article as described above is a tent, or a toy for classification purposes.

Law and Analysis:

Subheading 9503.90.0030, HTSUS, provides for other toys (except models), not having a spring mechanism. Note 1.(u), Chapter 95, HTSUS, states, that the chapter does not cover

"racket strings, tents or other camping goods, or gloves (classified according to their constituent material)." Accordingly, if the article meets the definition of "tents other camping goods" it cannot be classified as a toy.

The Explanatory Notes (EN) to the Harmonized Commodity Description and Coding System, which represent the official interpretation of the tariff at the international level, facilitate classification under the HTSUS by offering guidance in understanding the scope of the headings and General Rules of Interpretation of the HTSUS. Heading 6306 provides for tents of various materials. The EN for heading 6306, define the term "tents", as follows:

> Tents are shelters made of lightweight to fairly heavy fabrics of man-made fibres, cotton or blended textile materials, whether or not coated, covered or laminated, or of canvas. They usually have a single or double roof and sides or walls (single or double), which permit the formation of an enclosure. The heading covers tents of various sizes and shapes, e.g., marquees and tents for military, camping (including backpack tents), circus, beach use. They are classified in this heading, whether or not they are presented complete with their tent poles, tent pegs, guy ropes or other accessories.

The term "tent" is defined in Webster's Third New International Dictionary (1968) as "a collapsible shelter of canvas or other material stretched and sustained by poles, usu. made fast by ropes attached to pegs hammered into the ground, and used for camping outdoors (as by soldiers or vacationers) or as a temporary building."

The issue of tents versus toys was discussed in Headquarters Ruling Letters (HRL), 088644 dated June 11, 1991, 954239 dated September 14, 1993, 956974 dated November 23, 1994, and 957639 dated May 31, 1995. When these decisions are considered together, they offer useful guidelines in determining when articles in the form of "toy tents" are classified as tents or as toys for tariff purposes.

In HRL 088644, a Playskool Adventure Tent was made of nylon fabric, containing a mesh doorway secured at the bottom by a hook-and-loop fastener, and a mesh window with a flap. After importation, the poles and periscope were packaged with the tent. The poles were used to erect the tent and the periscope with a dome cap was attached to the top opening of the tent. We held that the article as imported was a tent.

In HRL 956974, a Ball Pit tent was made of nylon mesh and textile with a dome-shaped enclosure and with a plastic zippered opening in the front, and two nylon mesh side panels. The article was erected with poles and was imported with 500 multi-colored plastic balls. Based on 3(b) of the General Rules of Interpretation (GRI), HTSUS, we held that the article was a toy. However, we noted in the decision, that if the article was imported without the plastic balls, the article would be classified as a tent under the principle of GRI 1.

In HRL 957639, a Ball Barrel made of textile contained a steel spiral coil to form a barrel or tunnel-like article with zippered openings at each of end of the barrel. The article was designed to roll on the ground and was collapsible for storage. After importation, the article was packaged with multi-colored plastic balls for retail sale. We held that the barrel-like article, imported without the balls, was a toy, not a tent.

In HRL 954239, a play bed tent had a roof, two mesh openings and plastic poles to form the shape of a tent. The tent was designed to be attached the bottom portion to a mattress of a bed in the same manner as a fitted sheet. We held that the article was a toy, not a tent.

In HRLs 088644 and 956974 (if imported without the 500 plastic balls), the articles, although designed for young children, met the definitions for tents. The tents contained a roof, side walls which permit the formation of an enclosure, and poles were used to form the shape. The tents were shelters for outdoor use and cable of protecting the users from the elements. In this case the cone shaped inflatable Ball Pit Mountain has no roof. The opening at the top along with the four side openings expose the interior to the elements. There is no means to close the openings and poles are not used to shape an enclosure. The article cannot be used as a shelter. Accordingly, the inflatable Ball Pit Mountain is not a tent and it is not excluded from classification in subheading 9503.90.0030, HTSUS, by Note 1.(u)

Holding:

The inflatable Ball Pit Mountain, as described above, is classified in subheading 9503.90.0030, HTSUS.

NYRL A81066 dated April 3, 1996, is revoked.

JOHN DURANT,
Director,
Tariff Classification Appeals Division.

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, DC, July 9, 1996.

The following documents of the United States Customs Service, Office of Regulations and Rulings, have been determined to be of sufficient interest to the public and U.S. Customs Service field offices to merit publication in the CUSTOMS BULLETIN.

STUART P. SEIDEL,
Assistant Commissioner,
Office of Regulations and Rulings.

PROPOSED MODIFICATION OF CUSTOMS RULING LETTER RELATING TO THE COUNTRY OF ORIGIN OF COMFORTERS, QUILTED BED SPREADS AND BED LINENS

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of proposed modification of a country of origin ruling letter.

SUMMARY: Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs intends to modify a ruling pertaining to, *inter alia*, the country of origin of comforters, quilted bedspreads and bedding sets.

DATE: Comments must be received on or before August 23, 1996.

ADDRESS: Written comments (preferably in triplicate) are to be addressed to U.S. Customs Service, Office of Regulations and Rulings Division, 1301 Constitution Avenue, N.W., (Franklin Court), Washington, DC 20229. Comments submitted may be inspected at the Tariff Classification Appeals Division, Office of Regulations and Rulings, located at Franklin Court, 1099 14th St., N.W., Suite 4000, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Nancy Plumer, Textile Branch, (202) 482–7089.

SUPPLEMENTARY INFORMATION:

BACKGROUND

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Modern-

ization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs intends to modify a ruling pertaining to, *inter alia,* the country of origin of comforters, quilted bedspreads and bedding sets.

In New York Ruling Letter (NYRL) 818218, dated February 10, 1996, Customs dealt with the tariff classification and country of origin of comforters, quilted bedspreads and bedding sets. NYRL 812818 determined that under the Customs Regulations effective July 1, 1996, (19 CFR 102.21) implementing section 334 of the Uruguay Round Agreements Act, the country of origin for all the subject items was Pakistan. This ruling letter is set forth in "Attachment A". This office has reviewed these country of origin determinations in NYRL 818218 and it is our opinion that some of the determinations set forth are incorrect.

Customs intends to modify 812818 to reflect the proper country of origin analysis and determination for the subject items pursuant to 19 CFR Section 102.21. Specifically, the country of origin will be determined by application of Section 102.21(e) as discussed in NYRL 812818, as well as Section 102.21(c)(4) and (5). Thus, country of origin for some of the items in NYRL 818218 is not considered to be Pakistan. For example, pursuant to a Section 102.21(c)(5) analysis, the country of origin of the quilted bedspread, the comforters and bed skirts in items #2, #3 and #5 is Canada. before taking this action, consideration will be given to any written comments timely received. Proposed Headquarters Ruling Letter (HRL) 959304 is set forth in "Attachment B" to this document.

Claims for detrimental reliance under section 177.9, Customs Regulations (19 CFR 177.9), will not be entertained for actions occurring on or after the date of publication of this notice.

Dated: July 5, 1996.

JOHN B. ELKINS,
(for John Durant, Director,
Tariff Classification Appeals Division.)

[Attachments]

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
New York, NY, February 10, 1996.

CLA–2–94:RR:NC:TP:349 818218
Category: Classification
Tariff No. 9404.90.8522 and 9404.90.9555

MR. WILLIAM J. LECLAIR
TRANS-BORDER CUSTOMS SERVICES, INC.
ONE TRANS-BORDER DRIVE
P.O. Box 800
Champlain, NY 12919

Re: The tariff classification, country of origin marking and status under the North American Free Trade Agreement (NAFTA), of comforter, bedspreads and bedding sets from Canada; Article 509.

DEAR MR. LECLAIR:

In your letter dated January 11, 1996 on behalf of Lawrence Home Fashions, Inc. you requested a ruling on the status of comforters, bedspreads and bedding sets from Canada under the NAFTA.

You submitted a comforter, a bedspread and three bedding sets. These items are made from a 50 percent polyester and 50 percent cotton woven fabric. The fabric is made in Pakistan or China and shipped in a griege state to Canada. In Canada, the fabric is bleached, dyed, printed and then cut and sewn to create the finished bedding product. The items that are stuffed contain a 100 percent polyester fill from Canada. The bedding products may also contain other fabrics that are of Canadian or other NAFTA party origin. As requested, the samples will be returned.

Item #1 is a comforter made with the 50 percent polyester and 50 percent cotton outer shell fabric which was sourced in Pakistan and processed in Canada. The comforter is stuffed with Canadian fiberfill and it has been quilted through all three layers. A 6 millimeter piping has been inserted in the edge sewn on all four sides.

Item #2 is a quilted bedspread. The top surface is made from the polyester and cotton blend fabric sourced in Pakistan and processed in Canada. It is stuffed with a polyester fill of Canadian origin. The backing fabric is a plain white 50 percent polyester 50 percent cotton lightweight muslin type fabric that is of Canadian or U.S. origin. The bedspread has been quilt stitched through all three layers.

Item #3 is a bedding set consisting of a comforter, pillow sham and bed skirt. The sham, top surface of the comforter and the skirt component of the bed skirt are made from the blended fabric sourced in Pakistan and finished in Canada. The comforter is stuffed with Canadian fiberfill. The platform portion of the bed skirt is made from a man-made fiber non-woven material made in Canada. The backing fabric on the comforter is made from a plain white 50 percent polyester 50 percent cotton lightweight muslin type fabric of Canadian origin.

Item #4 is a comforter and sheet set. Both sides of the comforter as well or the flat sheet, fitted sheet and pillow case are made from the 50 percent polyester 50 percent cotton blended fabric sourced in Pakistan and processed in Canada. The comforter is stuffed with Canadian fiberfill and quilted. The fitted sheet is fully elasticized and cut and hemmed on all four sides. the flat sheet contains on selvage edge and is hemmed on four sides.

Item #5 is a "bed in a bag" set consisting of a comforter, flat sheet, fitted sheet, two pillow cases, 2 pillowshams and a bed skirt, the top of the comforter, both sheets, the shams, pillowcases and the skirt portion of the bed skirt are made from the blended fabric sourced in Pakistan and processed in Canada. The comforter is stuffed with Canadian fiber fill. The platform component of the bed skirt is made from a non-woven fabric made in Canada. The backing fabric on the comforter is made from a plain white 50 percent polyester 50 percent cotton lightweight muslin type fabric of Canadian origin.

The three sets meet the qualifications of "goods put up in sets for retail sale". The components of the sets consist of different articles which are, *prima facie*, classifiable in different headings. They are put up together to meet a particular need or carry out a specific activity, and they are packed for sale directly to users without repacking. The comforters impart the essential character in all three sets. The applicable tariff provision for the comforter and

the three bedding sets will be 9404.90.8522, Harmonized Tariff Schedule of the United States Annotated (HTSUSA), which provides for mattress supports; articles of bedding and similar furnishing (for example, mattresses, quilts, eiderdowns, cushions, pouffes and pillows) fitted with any material or of cellular rubber or plastics whether or not covered: other: other: other: quilts, eiderdowns, comforters and similar articles * * * with outer shell of man-made fibers. The general rate of duty will be 14.2 percent *ad valorem*.

The applicable tariff provision for the quilted bedspread will be 9404.90.9555, HTSUSA, which provides for mattress supports; articles of bedding and similar furnishing (for example, mattresses, quilts, eiderdowns, cushions, pouffes and pillows) fitted with any material or of cellular rubber or plastics, whether or not covered: other: other: other: other * * * of man-made fibers. The general rate of duty will be 13.1 percent *ad valorem*.

The merchandise does not quality for preferential treatment under the NAFTA because the non-originating materials used in the production of the goods will not undergo the change in tariff classification required by General Note 12(t)/94.7, HTSUSA. You have also inquired as to the country of origin marking requirements for these items. The marking statute, section 304, Tariff Act of 1930, as amended *(19 U.S.C. § 1304)*, provides that, unless excepted, every article of foreign origin (or its container) imported into the U.S. shall be marked in a conspicuous place as legibly, indelibly and permanently as the nature of the article (or its container) will permit, in such a manner as to indicate the ultimate purchaser in the U.S. the English name of the country of origin of the article. Part 134, Customs Regulations *(19 C.F.R. Part 134)* implements the country of origin marking requirements and exceptions of *19 U.S.C. § 1304*.

The country of origin marking requirements for a "good of a NAFTA country" are also determined in accordance with Annex 311 of the North American Free Trade Agreement ("NAFTA") as implemented by section 207 of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat 2057) (December 8, 1993) and the interim amendments to the Customs Regulations published as T.D. 94–4 (59 Fed. Reg. 109, January 3, 1994) with correction, (59 Fed. Reg. 5082, February 3, 1994) and T.D. 94–1 (59 Fed. Reg. 69460, December 30, 1993). These interim amendments took effect on January 1, 1994 to coincide with the effective date of the NAFTA. The Marking Rules used for determining whether a good is a good of a NAFTA country are contained in T.D. 94–4 (adding a new Part 102, Customs Regulations). The marking requirements of these goods are set forth in T.D. 94–1 (interim amendments to various provisions of Part 134, Customs Regulations).

Section 134.1(b) of the interim regulations, defines "country of origin" as

> the country of manufacture, production, or growth of any article of foreign origin entering the U.S. Further work or material added to an article in another country must effect a substantial transformation in order to render such other country the "country of origin within this part; however, for a good of a NAFTA country, the NAFTA Marking Rules will determine the country of origin. (Emphasis added).

Section 134.1(j) of the interim regulations, provides that the "NAFTA Marking Rules" are the rules promulgated for purposes of determining whether a good is a good of a NAFTA country. Section 134.1(g) of the interim regulations, defines a "good of a NAFTA country" as an article for which the country of origin is Canada, Mexico or the United States as determined under the NAFTA Marking Rules. Section 134.45(a)(2) of the interim regulations provides that a "good of a NAFTA country" may be marked with the name of the country of origin in English, French or Spanish. Part 102 of the interim regulations, sets forth the "NAFTA Marking Rules" for purposes of determining whether a good is a good of a NAFTA country for marking purposes. Section 102.11 of the interim regulations, sets forth the required hierarchy for determining country of origin for marking purposes.

Applying the NAFTA Marking Rules set forth in Part 102 of the interim regulations to the facts of this case, we find that the imported comforter, bedspread and bedding sets are a good of Canada for marking purposes.

Please note, however, that final amendments to the Customs Regulations to implement the provisions of section 334 of the Uruguay Round Agreements Act regarding the country of origin of textile and apparel products will affect your products. The regulations govern the determination of the country of origin of imported textile and apparel products for purposes of laws enforced by the Customs Service. The Rules of Origin for Textile and Apparel Products published as T.D. 95–69 effective October 5, 1995, 60 Fed. Reg. 46188 are to be applied to goods entered, or withdrawn from warehouse for consumption on or alter July 1, 1996. Section 102.21(c)(2) of this regulation requires a specific tariff classification change

set out in Section 102.21(e). For all the above products, the country of origin is the country in which the fabric comprising the good was formed by a fabric-making process. The country of origin for all the products included in this request would be Pakistan when entered or withdrawn from warehouse for consumption on or after July 1, 1996. This ruling is being issued under the provisions of Part 181 of the Customs Regulations (19 C.F.R. 181).

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist John Hansen at 212–466–5854.

Should you wish to request an administrative review of this ruling, submit a copy of this ruling and all relevant facts and arguments within 30 days of the date of this letter, to the Director, Commercial Rulings Division, Headquarters, U.S. Customs Service, 1301 Constitution Ave., NW, Franklin Court, Washington, DC 20229.

ROGER J. SILVESTRI,
Director,
National Commodity Specialist Division.

[ATTACHMENT B]

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
Washington, DC.

CLA–2 RR:CC:TE 959304 NLP
Category: Classification

MR. WILLIAM J. LECLAIR
TRANS-BORDER CUSTOMS SERVICES, INC.
ONE TRANS-BORDER DRIVE
P.O. Box 800
Champlain, NY 12919

Re: Modification of NYRL 818218; country of origin determination for comforters, quilted spreads, pillow shams, sheets, pillow cases and bed skirts; 19 CFR 102.21(c)(2), (4) and (5).

DEAR MR. LECLAIR:

On February 10, 1996, our New York office issued to you, on behalf of Lawrence Home Fashions, Inc., New York Ruling Letter (NY) 818218, which dealt with the classification and country of origin of comforters, bedspreads and bedding sets imported from Canada. After reviewing this ruling, we have determined that the country of origin determination set forth for some of these items is incorrect. Our ruling follows.

Facts:

The articles at issue are a comforter, a quilted bedspread and three bedding sets. We will describe each of the items and their respective manufacturing operations.

Item #1—Comforter:

The comforter is comprised of a 50% polyester and 50% cotton outer shell fabric and batting material made of 100% polyester nonwoven fiberfill fabric. The manufacturing operations are as follows:

Pakistan

50% polyester/50% cotton fabric for the outer shell is sourced

Canada

fabric for the batting is sourced
fabric for the outer shell is bleached, dyed, printed, cut and sewn
comforter is stuffed, quilted and assembled
6 millimeter piping is inserted in the edge seam on all four sides

Item #2—Quilted Bedspread:

The top surface is made from a 50% polyester and 50% cotton fabric and a batting material made of 100% polyester nonwoven fiberfill fabric. The comforter's backing fabric is a

plain white 50% polyester/50% cotton lightweight muslin type fabric. The bedspread has been quilt stitched through all three layers.

Pakistan

fabric for the top surface of the bedspread is sourced

Canada

fabric for the batting is sourced
fabric for the backing is sourced
fabric for the top surface is bleached, dyed, printed, cut and sewn
bedspread is assembled

Item #3—Bedding Set:

This item consists of a comforter, pillow sham and bed skirt.

Comforter: the top surface is made of a 50% polyester and 50% cotton fabric. It is stuffed with a batting material made of 100% polyester nonwoven fiberfill fabric. The comforter's backing material is a plain white 50% polyester/50% cotton lightweight muslin type fabric.

Pakistan

fabric for the top surface of the comforter is sourced

Canada

fabric for the batting is sourced
fabric for the comforter's backing is sourced
fabric for the top surface is bleached, dyed, printed, cut and sewn
comforter is stuffed and assembled

Sham: is made of a 50% polyester and 50% cotton fabric.

Pakistan

fabric is sourced

Canada

fabric is bleached, dyed, printed, cut and sewn
sham is assembled

Bed skirt: The skirt component is made of a 50% polyester and 50% cotton fabric. The platform portion is made of a man-made nonwoven fabric.

Pakistan

fabric for the skirt component is sourced

Canada

fabric for the skirt component is bleached, dyed, printed, cut and sewn
fabric for the platform portion is sourced
bed skirt

Item #4—Bedding Set:

This item consists of a comforter and sheet set.

Comforter: the outer shell of the comforter is made of a 50% polyester and 50% cotton fabric and is stuffed with a batting material made of 100% polyester nonwoven fiberfill fabric.

Pakistan

fabric for the outer shell is sourced

Canada

fabric for the batting is sourced
fabric for the outer shell is bleached, dyed, printed, cut and sewn
Comforter is stuffed, quilted and assembled

Sheets and pillowcases: are made of a 50% polyester and 50% cotton fabric. The fitted sheet is fully elasticized and cut and hemmed on all four sides. The fiat sheet contains one selvage edge and is hemmed on all four sides.

Pakistan

fabric is sourced

Canada

fabric is bleached dyed, printed, cut and sewn
sheets and pillowcases are assembled

Item #5—Bedding Set:

This item is a bed in a bag set consisting of: a comforter, a flat sheet, a fitted sheet, two pillow cases, two pillow shams and a bed skirt.

Comforter: the top surface of the comforter is made of a 50% polyester and 50% cotton fabric and it is stuffed with a batting material made of 100% polyester nonwoven fiberfill fabric. The comforter's backing fabric is made from a plain white 50% polyester/50% cotton lightweight muslin type fabric.

Pakistan

fabric for the top surface is sourced

Canada

fabric for the batting is sourced
fabric for the comforters backing is sourced
fabric for the top surface is bleached, dyed, printed, cut and sewn
comforter is stuffed and assembled

Sheets and pillowcases: are made of a 50% polyester and 50% cotton fabric.

Pakistan

fabric is sourced

Canada

fabric is bleached, dyed, printed, cut and sewn
sheets and pillowcases are assembled

Sham: is made of the 50% polyester and 50% cotton fabric

Pakistan

fabric is sourced

Canada

fabric is bleached, dyed, printed, cut and sewn
sham is assembled

Bed skirt: the skirt component is made of a 50% polyester and 50% cotton fabric. The platform component is made from a nonwoven fabric.

Pakistan

fabric for the skirt is sourced

Canada

fabric for the platform is sourced
fabric for the skirt is bleached, dyed, printed, cut and sewn
bed skirt is assembled

Issue:

What is the country of origin of the subject merchandise?

Law and Analysis:

Pursuant to the Uruguay Round Agreements Act, new rules of origin will be effective for textile products entered, or withdrawn from warehouse for consumption, on or after July 1, 1996. These rules were published in the Federal Register, 60 Fed. Reg. 46188 (September 5, 1995). Section 102.21, Customs Regulations (19 CFR Section 102.21), sets forth the general rules which determine country of origin. The country of origin of a textile product will be determined by a hierarchy of rules set forth in paragraphs (c)(1) through (c)(5) of Section 102.21.

Section 102.21(c)(1) sets forth the general rule for determining the country of origin of a textile product in which the good is wholly obtained or produced in a single country, territory, or insular possession. It states the following: "The country of a textile or apparel product is the single, country, territory, or insular possession in which the good was wholly obtained or produced." As the subject merchandise is not wholly obtained or produced in a single country, territory or insular possession, paragraph(c)(1) of Section 102.21 is inapplicable.

Section 102.21(c)(2) provides for instances where the country of origin of a textile product cannot be determined under Section 102.21(c)(1). Section 102.21(c)(2) provides the following:

> Where the country of origin of a textile or apparel product cannot be determined under paragraph (c)(1) of this section, the country of origin of the good is the single country, territory, or insular possession in which each foreign material incorporated in that

good underwent an applicable change in tariff classification, and/or met any other requirement, specified for the good in paragraph (e) of this section.

Paragraph (e) states that "The following rates shall apply for purposes of determining the country of origin of a textile or apparel product under paragraph (c)(2) of this section." Two provisions are applicable in this instance to wit:

6301–6306	The country of origin of a good classifiable under heading 6301 through 6306 is the country, territory, or insular possession in which the fabric comprising the good was formed by a fabric-making process.
9404.90	The country of origin of a good classifiable under subheading 9404.90 is the country, territory, or insular possession in which the fabric comprising the good was formed by a fabric-making process.

The sheets and pillowcases are classifiable in heading 6302, Harmonized Tariff Schedule of the United States (HTSUS). The subject pillow shams and bed skirts are classifiable in heading 6304, HTSUS. As the fabric comprising the pillow shams, the sheets and pillowcases was formed by a fabric making process in a single country, that is, Pakistan, the country of origin for these articles is Pakistan. However, as the fabric for the bed skirt is formed in two countries, the tariff shift rule is not applicable to that merchandise.

The comforters in items #1, 3, 4, and 5 and the quilted spread in item #2 are classifiable under subheading 9404.90, HTSUS. These items are comprised of either two or three fabrics sourced in two countries. Therefore, as there is no single country in which the fabric was formed, the tariff shift rule is not applicable to this merchandise and our hierarchical application of Section 102.21(c) continues.

Section 102.21(c)(3) states that "Where the country of origin of a textile or apparel product cannot be determined under paragraph (c)(1) or (2) of this section:

(i) If the good was knit to shape, the country of origin of the good is the single country, territory, or insular possession in which the good was knit; or

(ii) Except for goods of heading 5609, 5807, 5811, 6213, 6214, 6301 through 6306, and 6308, and subheadings 6209.20.5040, 6307.10, 6307.90, and 9404.90, if the good was not knit to shape and the good was wholly assembled in a single country, territory, or insular possession, the country of origin of the good is the country, territory, or insular possession in which the good was wholly assembled.

As the comforters, the quilted bedspread and the bed skirts are not knit to shape and heading 6304, HTSUS, and subheading 9404.90, HTSUS, are both excepted from provision (ii), Section 102.21(c)(3) is inapplicable.

Section 102.21(c)(4) provides:

Where the country of origin of a textile or apparel product cannot be determined under paragraph (c)(1), (2) or (3) of this section, the country of origin of the good is the single country, territory, or insular possession in which the most important assembly or manufacturing process occurred.

In the case of the comforters in items #1 and #4, the fabric making process of the comforters' outer shells constitutes the most important manufacturing process. It is the outer shell which actually forms the merchandise. Moreover, basing the country of origin determination on the fabric making process as opposed to the assembly process carries out the clear intent of Section 334 as expressed in Section 334(b)(2) and Part 102.21(c)(3)(ii). Accordingly, the fabric making process in Pakistan, where the fabric for the comforters outer shells is formed, constitutes the most important manufacturing process. Therefore, the country of origin for these comforters is Pakistan.

In the case of the quilted bedspread, the comforters and bed skirts in items #2, #3 and #5, the most important manufacturing process occurs at the time of the fabric making. As the fabric for these articles is sourced in more than one country, and no one fabric is more important than the other, the country of origin cannot be readily determined based on the fabric making process. As such, paragraph (c)(4) is not applicable to this merchandise.

Section 102.21(c)(5) states the following:

Where the country of origin of a textile or apparel product cannot be determined under paragraph (c)(1), (2), (3) or (4) of this section, the country of origin of the good is the last country, territory, or insular possession in which an important assembly or manufacturing process occurred.

Accordingly, in the case of the quilted bedspread, the comforters and bed skirts in items 2, #3 and #5, the country of origin is conferred by the last country in which an important assembly or manufacturing process occurred, that is, Canada.

Holding:

The country of origin for the pillow shams in items #3 and #5 and the sheets and pillow cases in items #4 and #5 is Pakistan.

The country of origin for the comforters in item's #1 and #4 is Pakistan.

The country of origin for the quilted bedspread, the comforters and bed skirts in items #2, #3 and #5 is Canada.

Pursuant to the analysis and holding of this ruling, NYRL 812818 is modified accordingly.

The holding set forth above applies only to the specific factual situation and merchandise identified in the ruling request. This position is clearly set forth in section 19 C.F.R. § 177.9(b)(1). This sections states that a ruling letter, either directly, by reference, or by implication, is accurate and complete in every material respect.

Should it be subsequently determined that the information furnished is not complete and does not comply with 19 C.F.R. § 177.9(b)(1), the ruling will be subject to modification or revocation. In the event there is a change in the facts previously furnished, this may affect the determination of country of origin. Accordingly, if there is any change in the facts submitted to Customs, it is recommended that a new ruling request be submitted in accordance with 19 C.F.R. § 177.2.

JOHN DURANT,
Director,
Tariff Classification Appeals Division.

PROPOSED MODIFICATION OF RULING LETTER RELATING TO THE COUNTRY OF ORIGIN MARKING OF IMPORTED GOLF CLUB SETS

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of proposed modification of country of origin marking ruling letter.

SUMMARY: Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1), as amended by section 623 of Title VI (Customs Modernization of the North American Free Trade Agreement ("NAFTA") Implementation Act (Pub. L. 103–182, 107 Stat, 2057 (1993), this notice advises interested parties that Customs intends to modify a ruling issued pursuant to 19 CFR Part 181 regarding a country of origin determination under 19 CFR Part 102 (NAFTA "Marking Rules") for imported golf club sets. Comments are invited on the proposed ruling.

DATE: Comments must be received on or before August 23, 1996.

ADDRESS: Written comments (preferably in triplicate) are to be addressed to U.S. Customs Service, Office of Regulations and Rulings, Attention: Tariff Classification Appeals Division, 1301 Constitution Avenue, N.W., Franklin Court, Washington, DC 20229. Comments submitted may be inspected at the Tariff Classification Appeals Division, Office of Regulations and Rulings, located at Franklin Court, 1099 14th Street, N.W., Suite 4000, Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Anthony Tonucci, Special Classification and Marking Branch, (202–482–7073).

SUPPLEMENTARY INFORMATION:

BACKGROUND

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement ("NAFTA") Implementation Act (Pub. L. 103–182, 107 Stat. 2057 (1993), this notice advises interested parties that Customs intends to modify a ruling issued pursuant to section 181.99, Customs Regulations (19 CFR 181.99) regarding the country of origin marking of golf club sets imported from Canada, a NAFTA country.

In New York ruling letter (NY) 810816, dated June 1, 1995, New York ruled that pursuant to section 102.14, interim Customs Regulations (19 CFR 102.14), the country of origin of imported golf club sets assembled in Canada from U.S. origin stainless steel heads and rubber grips and Japanese origin stainless steel shafts is Canada, and thus marking the outside carton with the words "Assembled in Canada" was an acceptable country of origin marking for the imported golf club sets. This ruling letter is set forth in "Attachment A". This office has reviewed the decision in NY 810816, and in our opinion, the holding that the country of origin of the imported golf club sets is "Canada" pursuant to section 102.14, rather than pursuant to section 102.11(d)(2)(i), interim Customs Regulations (19 CFR 102.11(d)(2)(i)), is erroneous and modification of that ruling is required.

It remains Customs' position that the imported golf club sets are of Canadian origin and marking their retail containers "Assembled in Canada" is an acceptable country of origin marking for the imported golf club sets. However, Customs intends to modify NY 810816 to reflect that it is pursuant to section 102.11(d)(2)(i) interim Customs Regulations, that the country of origin of the golf club sets is Canada. Proposed Headquarter's Ruling Letter 559431 is set forth in Attachment B to this document.

Dated: July 3, 1996.

SANDRA L. GETHERS,
(for John Durant, Director,
Tariff Classification Appeals Division.)

[Attachments]

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
New York, NY, June 1, 1995.
MAR–2–95:S:N:N8:224 810816
Category: Marking

DANIEL MURPHY DIMARCO
Golf 5170 Dixie Rd
Mississauga, CA L4W 1E3

Re: Country of origin marking of imported golf clubs.

DEAR MR. MURPHY:

This is in response to your letter dated May 16, 1993, requesting a ruling on the country of origin marking requirements for imported golf club sets which are assembled from U.S. and Japanese components in a NAFTA country. A marked sample was not submitted with your letter for review.

Your company assembles golf clubs for companies based in the United States. These companies supply components for the assembly operations including golf club heads, rubber golf club grips, golf club ferrules, two sided grip tape and steel golf club shafts. All of the components with the exception of the steel shafts have as their country of origin the United States. The shafts originate in Japan.

You have indicated that these components are assembled into 8 piece golf club sets ranging from a 3 iron to a pitching wedge. The assembly operation consists of the following steps:

1. cutting the steel shaft
2. applying the ferrule to the shaft
3. epoxying the head to the shalt
4. applying the grip to the shaft
5. packaging ready for shipping
6. marking the carton "Assembled in Canada"

The marking statute, section 304, Tariff Act of 1930, as amended *(19 U.S.C. 1304)*, provides that, unless excepted, every article of foreign origin (or its container) imported into the U.S. shall be marked in a conspicuous place as legibly, indelibly and permanently as the nature of the article (or its container) will permit, in such a manner as to indicate the ultimate purchaser in the U.S. the English name of the country of origin of the article. Part 134, Customs Regulations (19 CFR Part 134) implements the country of origin marking requirements and exceptions of *19 U.S.C. 1304*.

The country of origin marking requirements for a "good of a NAFTA country" are also determined in accordance with Annex 311 of the North American Free Trade Agreement ("NAFTA"), as implemented by section 207 of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat 2057) (December 8, 1993) and the interim amendments to the Customs Regulations published as T.D. 94–4 (59 Fed. Reg. 109, January 3, 1994) with corrections (59 Fed. Reg. 5082, February 3, 1994) and T.D. 94–1 (59 Fed. Reg. 69460, December 30. 1993). These interim amendments took effect on January, 1, 1994 to coincide with the effective date of the NAFTA. The Marking Rules used for determining whether a good is a good of a NAFTA country are contained in T.D. 94–4 (adding a new Part 102, Customs Regulations). The marking requirements of these goods are set forth in T.D. 94–1 (interim amendments to various provisions of Part 134, Customs Regulations).

Section 134.45(a)(2) of the interim regulations, provides that "a good of a NAFTA country may be marked with the name of the country of origin in English, French or Spanish. Section 134.1(g) of the interim regulations, defines a "good of a NAFTA country" as an article for which the country of origin is Canada, Mexico or the United States as determined under the NAFTA Marking Rules.

In this case, you state that U.S. and Japanese components are exported to a NAFTA country where they are assembled prior to being re-imported into the U.S.

The rules for determining when, for marking purposes, the country of origin of an imported good is one of the parties to "NAFTA" are set forth in Part 102, Customs Regulations.

Section 102.14 of the interim regulations, provides in pertinent part that no good, last advanced in value or improved in condition outside the United States has United States

origin. If under any other provisions of Part 102 such a good is determined to be a good of the United States, that determination will be disregarded and the country of origin of the good will be the last foreign country in which the good was advanced in value or improved in condition. "Advanced in value" is defined in section 102.1(a) of the interim regulations as "an increase in the value of a good as a result of production with respect to that good, other than by means of those "minor processing" operations described in paragraphs (m)(5), (m)(6) and (m)(7) of this section". "Improved in Condition" is defined in section 102.1(i) as "the enhancement of the physical condition of a good as a result of production with respect to that good, other than by means of those "minor processing" operations described in paragraphs (m)(5), (m)(6) and (m)(7) of this section". (Minor processing operations described in paragraphs (m)(5), (m)(6) and (m)(7) include unloading, reloading or any other operation necessary to maintain the good in good condition; putting up in measured doses, packing, repacking, packaging, repackaging; testing, marking, sorting or grading).

In this case, we find that the U. S. and Japanese components are advanced in value or improved in condition as a result of the assembly operation in "Canada". Accordingly, pursuant to section 102.14 of the interim regulations, the country of origin of the imported golf clubs is "Canada", the last foreign country in which the good was advanced in value or improved in condition. Therefore, for purposes of the country of origin marking requirements of *19 U.S.C. 1304*, the imported golf club sets must be marked to indicate that the country of origin of the golf clubs is "Canada", the last foreign country in which the good was advanced in value or improved in condition. Section 134.43(e) of the interim regulations, provides in part that "where the country of origin of an article is determined in accordance with section 102.14, part 102 of this Chapter, such article, at the choice of the importer, exporter or producer of the good, may be marked, as appropriate, in a manner such as the following:

(1) Assembled in (name of foreign country) from U.S. and Japanese components;
(2) Further processed in (name of country of origin) from U.S. and Japanese materials;
(3) Product of (name of foreign country) made from U.S. and Japanese components.

This ruling is being issued under the provisions of Part 181 of the Customs Regulations (19 CFR Part 181).

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is entered. If the documents have been filed without a copy, this ruling should be brought to the attention of the Customs officer handling the transaction.

JEAN F. MAGUIRE,
Area Director,
New York Seaport.

[ATTACHMENT B]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC.

MAR–2 RR:TC:SM 559431 AT
Category: Marking

MR. DANIEL MURPHY
OPERATIONS MANAGER
DIMARCO GOLF
4500 Dixie Rd., Unit 12 A
Mississauga, CA L4W1V7

Re: Modification of NY 810816 concerning country of origin marking requirements of imported golf clubs assembled in Canada from U.S. and Japanese origin components; Article 509; NAFTA marking rules; section 102.11 of the interim regulations.

DEAR MR. MURPHY:

This letter is to inform you that Customs is reconsidering your original submission dated May 16, 1996, submitted to the National Import Specialist, New York Office, request-

ing a ruling concerning the country of origin marking requirements for imported golf clubs which are assembled in Canada from U.S. and Japanese components.

Facts:

According to your May 16, 1996 submission, DiMarco Golf imports golf clubs into the U.S. which are assembled in Canada from U.S. and Japanese components. You state that all of the components (stainless steel heads, rubber golf club grips, ferrules and two sided grip tape) are of U.S. origin, except the stainless steel shafts which are of Japanese origin. These components are assembled in Canada into 8 piece golf club sets consisting of 7 irons (3, 4, 5, 6, 7, 8, and 9) and a pitching wedge. You submit that the assembly operation performed in Canada to make the golf clubs consists of the following steps:

1. Cutting the stainless steel shaft.
2. Applying the ferrule to the shaft.
3. Epoxying the head to the shaft.
4 Applying the grip to the shaft
5. Packaging the golf club sets ready for shipment.
6. Marking the carton "Assembled in Canada".

You inquired as to whether marking the outside carton in which the golf club sets were packaged with the words "Assembled in Canada" would be an acceptable country of origin marking for the imported golf club sets. In NY 810816 dated June 1, 1995, our New York office ruled that pursuant to section 102.14, interim Customs Regulations (19 CFR 102.14), the country of origin of the imported golf club sets is Canada, and thus marking the outside carton with the words "Assembled in Canada" was an acceptable country of origin marking for the imported golf club sets. We have determined, for the reasons set forth below, that our New York office erred in their analysis and conclusion that the country of origin of the imported golf club sets is "Canada" pursuant to section 102.14 of the interim regulations. Thus, modification of that ruling is required.

Issue.

What are the country of origin marking requirements of the imported golf club sets which are assembled in Canada with U.S. components and Japanese-origin stainless steel heads in the manner described above?

Law and Analysis:

The marking statute, section 304, Tariff Act of 1930, as amended (19 U.S.C. 1304), provides that, unless excepted, every article of foreign origin (or its container) imported into the U.S. shall be marked in a conspicuous place as legibly, indelibly and permanently as the nature of the article (or its container) will permit, in such a manner as to indicate to the ultimate purchaser in the U.S. the English name of the country of origin of the article. Part 134, Customs Regulations (19 CFR Part 134) implements the country of origin marking requirements and exceptions of 19 U.S.C. 1304.

The country of origin marking requirements for a "good of a NAFTA country" are also determined in accordance with Annex 311 of the North American Free Trade Agreement ("NAFTA"), as implemented by section 207 of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat 2057) (December 8, 1993). The rules currently used for determining the country of origin of a good imported from a NAFTA country ("Marking Rules") are contained in Part 102, interim Customs Regulations (19 CFR Part 102) [final rule published as T.D. 96–48 in the Federal Register on June 6, 1996, effective on August 5, 1995, 61 FR 28932].

Section 134.1(b) of the Customs Regulations defines "country of origin" as:

> the country of manufacture, production, or growth of any article of foreign origin entering the U.S. Further work or material added to an article in another country must effect a substantial transformation in order to render such other country the "country of origin within this part; *however for a good of a NAFTA country, the NAFTA Marking Rules will determine the country at origin.* (Emphasis added).

Section 134.1(j) of the Customs Regulations provides that the "NAFTA Marking Rules" are the rules promulgated for purposes of determining whether a good is a good of a NAFTA country. Section 134.1(g) of the Customs Regulations defines a "good of a NAFTA country" as an article for which the country of origin is Canada, Mexico or the United States as determined under the NAFTA Marking Rules. Section 134.45(a)(2) of the Customs Regulations provides that a "good of a NAFTA country" may be marked with the name of the country of origin in English, French or Spanish.

In this case, the golf club sets are assembled in Canada from U.S. and Japanese origin components. Thus, in order to determine the appropriate marking requirements for the imported golf club sets, we must determine under the NAFTA Marking Rules the country of origin of the golf clubs which are assembled in Canada in the manner described above.

Section 102.11 of the interim Customs Regulations (19 CFR 102.11), sets forth the required hierarchy for determining country of origin of goods from NAFTA countries for marking purposes. Section 102.11(a) of the interim Customs Regulations states that "[t]he country of origin of a good is the country in which:

(1) The good is wholly obtained or produced;
(2) The good is produced exclusively from domestic materials; or
(3) Each foreign material incorporated in that good undergoes an applicable change in tariff classification set out in section 102.20 and satisfies any other applicable requirements of that section, and all other requirements of these rules are satisfied."

"Foreign Material" is defined in section 102.1(e) of the interim Customs regulations as "a material whose country of origin as determined under these rules is not the same country as the country in which the good is produced."

Since the individual golf clubs (7 irons and a pitching wedge) which make up the imported golf club sets are assembled in Canada from U.S. and Japanese components (foreign, as defined in section 102.1(e) of the interim regulations) the golf clubs are neither wholly obtained/produced nor produced exclusively from domestic materials. Therefore, paragraphs (a)(1) and (a)(2) of section 102.11 cannot be used to determine the country of origin of the golf club sets. Thus, paragraph (a)(3) of section 102.11 is the applicable rule that next must be applied to determine the origin of the finished article.

The three components (excluding fasteners) of the assembled golf clubs, in this case, consists of the U.S. origin stainless steel shaft and rubber grips, and the Japanese origin stainless steel heads. The completely assembled golf clubs are classified under subheading 9506.31, HTSUS. The stainless steel heads and shafts and the rubber golf grips are classified as parts of golf clubs under subheading 9506.39, HTSUS. The applicable change in tariff classification set out in section 102.20(5), Section XX, Chapters 94 through 96, 9506.31 of the interim regulations provides:

9506.31	A change to subheading 9506.31 from any other subheading, except subheading 9506.39.

In this case, since the foreign stainless steel shafts end heads and the rubber grips are classified under subheading 9506.39, HTSUS, they do not undergo the applicable change in tariff classification set out in section 102.20(s), and, as a result, section 102.11(b) of the hierarchial rules must be applied next to determine the country of origin of the assembled golf clubs.

Section 102.11(b) of the interim Customs Regulations provides that:

Except for a good that is specifically described in the Harmonized System as a set, or is classified as a set pursuant to General Rule of Interpretation 3, where the country of origin cannot be determined under paragraph (a), the country of origin of the good:

(1) Is the country or countries of origin of the single material that imparts the essential character of the good, or
(2) If the material that imparts the essential character of the good is fungible, has been commingled, and direct physical identification of the origin of the commingled material is not practical, the country or countries of origin may be determined on the basis of an inventory management method provided under the Appendix to part 181 of the Customs Regulations.

Although the imported articles are commonly referred to as "golf club sets" they are not described in the Harmonized System as a set, or are classified as a set pursuant to General Rule of Interpretation 3. Thus, section 102.11(c) is not applicable, but section 102.11(b) must be applied in determining the origin of the golf clubs.

Applying section 102.11(b)(1), to the facts of this case, we find that there is no single material that imparts the essential character to the golf clubs. In our opinion, in this case, all three components (stainless steel golf club shafts and heads and the rubber golf club grips) are essential parts of the golf clubs. Accordingly, since section 102.11(c) is not applicable, section 102.11(d) of the hierarchial rules must be applied next to determine the country of origin of the golf clubs.

Section 102.11(d) of the interim Customs regulations provides that:

> (d) Where the country of origin of the good cannot be determined under paragraph (a), (b) or (c) of this section, the country of origin of the good shall be determined as follows:
>
> (1) The last country in which the good underwent production, other than by simple assembly or minor processing, or
>
> (2) If the good is produced by simple assembly:
>
> (i) The country in which the good is assembled if the parts that merit equal consideration as imparting the essential character of the good do not have the same country of origin, or
>
> (ii) The country of origin of the parts assembled into the good that merit equal consideration as imparting the essential character of the good if all those parts have the same country of origin.

"Simple assembly" is defined in section 102.1(o) of the interim Customs Regulations as:

> the fitting together of five or fewer parts all of which are foreign (excluding fasteners such as screws, bolts, etc.) by bolting, *gluing*, soldering, sewing or by other means without more than minor processing. (Emphasis added).

Based on the facts in this case, the golf clubs are produced in Canada as a result of "simple assembly" since there are only three components (heads, shafts and grips) all of which (excluding fasteners) are foreign and are fitted together by gluing. On the other hand, since these components have different countries of origin—the U.S. and Japan—section 102.11(d)(2)(1) of the interim Customs Regulations, is the applicable rule for determining the country of origin of the golf clubs. Applying section 102.11(d)(2)(1) to the facts in this case, we find that the country of origin of the imported golf club sets is Canada—the country in which the goods are assembled.[1] Accordingly, the individual golf clubs or their retail containers in which the golf club sets are sold to the ultimate purchaser in the U.S., must be marked to indicate Canada as the country of origin of the golf club sets in accordance with tile marking requirements of 19 U.S.C. 1304.

We note that while it appears that the golf clubs which are assembled from U.S. origin stainless steel heads and rubber grips are eligible for a partial duty exemption under 9802.00.80, HTSUS and that the country of origin marking requirements of 19 CFR 10.22 apply, please note that in T.D. 96–48 published at 61 F.R. 28932, 28955 (June 6, 1996) Customs has removed 19 CFR 10.22. Also, section 102.14 has been removed pursuant to T.D. 96–48 as well. These regulatory amendments will be effective for goods entered, or withdrawn from warehouse, for consumption on or after August 5, 1996.

However, pursuant to section 134.43(e), Customs Regulations (19 CFR 134.43(e)), also amended by T.D. 96–48 and effective on August 5, 1996, marking the retail containers in which the imported golf club sets are sold to the ultimate purchaser in the U.S. with the words, "Assembled in Canada", is an acceptable country of origin marking since Canada—the country of final assembly—is the country of origin of the golf club sets.

Holding:

Pursuant to 19 CFR 102.11(d)(2)(i) the country of origin of imported golf club sets which are assembled in Canada from U.S. origin stainless steel heads and rubber grips and Japanese-origin stainless steel shafts in the manner described above, is Canada. New York ruling 810816 is hereby modified in accordance with this ruling

Pursuant to 19 CFR 134.43 (a), marking the retail containers in which the golf club sets are sold to the ultimate purchaser in the U.S. with the words "Assembled in Canada" is an acceptable country of origin marking for the imported golf club sets under 19 U.S.C. 1304, for those that are entered, or withdrawn from warehouse, for consumption on or after August 5, 1996.

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is entered. If the documents have been filed without a copy, this ruling should be brought to the attention of the Customs officer handling the transaction.

JOHN DURANT,
Director,
Tariff Classification Appeals Division.

---

[1] We note however, that after the amendments to section 102.11(d) set forth in T.D. 96–48 become effective for goods entered or withdrawn from warehouse, for consumption on or after August 5, 1996, Canada will be the country of origin under section 102.11(d)(3).

PROPOSED MODIFICATION OF CUSTOMS RULING LETTER RELATING TO TARIFF CLASSIFICATION OF CADAVER BAGS (BODY BAGS)

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of proposed modification of tariff classification ruling letter.

SUMMARY: Pursuant to section 625(c)(1) of the Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), thIs notice advises interested parties that Customs intends to modify a ruling pertaining to the tariff classification of cadaver bags (body bags).

DATE: Comments must be received on or before August 23, 1996.

ADDRESS: Written comments (preferably in triplicate) are to be addressed to U.S. Customs Service, Office of Regulations and Rulings, Attention: Tariff Classification Appeals Division, 1301 Constitution Avenue, N.W. (Franklin Court), Washington, DC 20229. Comments submitted may be inspected at the Tariff Classification Appeals Division, Office cf Regulations and Rulings, located at Franklin Court, 1099 14th Street, N.W., Suite 4000, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Arnold L. Sarasky, Food and Chemicals Classification Branch, (202) 482–7020.

SUPPLEMENTARY INFORMATION:

BACKGROUND

Pursuant to section 625(c)(1) of the Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs intends to modify a ruling pertaining to the tariff classification of cadaver bags (body bags).

Ruling Letter DD 848665, issued January 30, 1990, by the District Director, Philadelphia, PA, held that cadaver bags (body bags) were classifiable under subheading 3923.90.0000, Harmonized Tariff Schedule of the United States Annotated (HTSUSA), the provision for articles for the conveyance or packing of goods, of plastics; other. A copy of the above ruling is set forth in Attachment A to this document.

Customs Headquarters is of the opinion that that ruling is incorrect insofar as it is based on the premise that a cadaver is "goods" within the meaning of the HTSUSA. We also note that the ruling is in conflict with 2 rulings subsequently issued (New York Ruling Letter (NYRL) 886980, dated June 24, 1993, and NYRL 802516, dated September 30, 1994, which held that cadaver bags were classifiable in subheading

3926.90.9890, HTSUSA, which provides for other articles of plastics, other.

We propose to modify DD 848665 in order to place cadaver bags in subheading 3926.90.9890, HTSUSA.

Before taking this action, consideration will be given to any written comments timely received. The proposed ruling modifying DD 848665 is set forth in Attachment B to this document.

Claims for detrimental reliance under section 177.9, Customs Regulations (19 CFR 177.9), will not be entertained for actions occurring on or after the date of publication of this notice.

Dated: July 5, 1996

JOHN B. ELKINS,
(for John Durant, Director,
Tariff Classification Appeals Division.)

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Philadelphia, PA, January 30, 1990.

CLA–2–39:S:N:N–3:21A
Category: Classification
Tariff No. 3923.90.0000

MR. MICHAEL O'NEILL
O'NEILL & WHITAKER, INC.
1809 Baltimore Avenue
Kansas City, MO 64108

Re: The tariff classification of cadaver/body bags and kits from Taiwan.

DEAR MR. O'NEILL:

In your letter dated January 11, 1989 you requested a tariff classification ruling.

The applicable subheading for the body bags, which are made of a strong, high grade plastic, with a heavy duty, rustproof nylon zipper that runs the full length of the bag, and the body bag kits, which contain the body bag with a chin strap, cellulose pads, two 60″ ties, three 36″ ties, 3 bright yellow identification tags and 3 white I.D. tags will be 3923.90.0000, Harmonized Tariff Schedule of the United States (HTS), which provides for articles for the conveyance or packing of goods, of plastics; other. The rate of duty will be 3 per cent *ad valorem*.

This ruling is being issued under the provisions of Section 177 of the Customs Regulations (19 C.F.R. 177).

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have been filed without a copy, this ruling should be brought to the attention of the Customs officer handling the transaction.

STEVEN A. KNOX,
District Director,
Philadelphia.

[ATTACHMENT B]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC.

CLA-2 RR:TC:FC 958803 ALS
Category: Classification
Tariff No. 3926.90.9890

MR. MICHAEL O'NEILL
O'NEILL & WHITAKER, INC.
1809 Baltimore Avenue
Kansas City, MO 64108

Re: Modification of District Director Ruling Letter (DD) 848665, dated January 30, 1990, regarding cadaver/body bags and kits from Taiwan.

DEAR MR. O'NEILL:

In DD 848665 you were advised that body bags, including body bag kits, were classifiable in 3923.90.000, Harmonized Tariff Schedule of the United States Annotated (HTSUSA). These bags were considered articles for the conveyance or packing of goods, of plastics.

Facts:

The articles under consideration are body bags, which are made of a strong high grade plastic, with a heavy duty, rustproof nylon zipper that runs the full length of the bag, and body bag kits, which contain the body bag with a chin strap, cellulose pads, two 60" ties, 3 bright yellow identification tags and 3 white I.D. tags. The articles, which come in two sizes and are intended for 1 time use, are used by hospitals, morgues, mortuaries, medical schools, as well as police, fire, ambulance and emergency vehicles for handling a cadaver.

Issue:

What is the classification of cadaver bags (body bags), including tags, straps, pads and ties, of plastics?

Law and Analysis:

Classification of merchandise under the HTSUSA is governed by the General Rules of Interpretation (GRI's) taken in order. GRI 1 provides that the classification is determined first in accordance with the terms of the headings and any relative section and chapter notes. If GRI 1 fails to classify the goods and if the headings and legal notes do not otherwise require, the remaining GRI's are applied, taken in order.

DD 848665 held that the subject articles were classifiable under subheading 3923.90.0000, HTSUSA, the provision for articles for the conveyance of packing of goods, of plastics; other. In considering the propriety of that classification we considered the definition for the term "goods" contained in Harmonized Tariff Schedule of the United States and in the Explanatory Notes (EN) to the Harmonized System. General Note 1, HTSUSA, provides that the Schedule covers goods imported into the United States and General Note 16, HTSUSA, exempts corpses, etc. from General Note 1. The EN to Rule 1 of the General Rules of Interpretation (GRI's), states that "[T]he Nomenclature sets out * * * goods handled in international trade."

In reviewing this nomenclature we have concluded that human remains are not an item which would be considered to be encompassed by the term "goods" as that term is used in the HTSUSA, i.e., a cadaver is not an article of trade. Thus, while we do not question the use of the bags, i.e., the transportation of human remains, we believe that since such remains are not "goods", the classification state in the referenced ruling, which is dependent on the conveyance of goods, is incorrect. In this regard, we note that two subsequent rulings, New York Ruling Letter (NYRL) 886980, dated June 24, 1993, and NYRL 802516, dated September 30, 1994, classified body bags in subheading 3926.90.9890, HTSUSA, which provides for other articles of plastics, other.

Holding:

Cadaver bags (body bags) of plastics designed to transport human remains, as well as kits containing such bags and related items such as straps and pads, are classifiable in subhead-

ing 3926.90.9890, HTSUSA, which provides for other articles of plastics, other. Articles so classified are subject to a general rate of duty or 5.3 percent *ad valorem*.

DD 848665 is hereby modified.

JOHN DURANT,
Director,
Tariff Classification Appeals Division.

PROPOSED MODIFICATION OF CUSTOMS RULING LETTER RELATING TO TARIFF CLASSIFICATION OF PROTECTIVE GEAR FOR USE IN THE SPORT OF IN-LINE SKATING

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of proposed modification of tariff classification ruling letter.

SUMMARY: Pursuant to section 625(c)(1) of the Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs intends to modify several rulings pertaining to the tariff classification of protective gear for use in the sport of in-line skating.

DATE: Comments must be received on or before August 23, 1996.

ADDRESS: Written comments (preferably in triplicate) are to be addressed to U.S. Customs Service, Office of Regulations and Rulings, Attention: Tariff Classification Appeals Division, 1301 Constitution Avenue, N.W. (Franklin Court), Washington, DC 20229. Comments submitted may be inspected at the Tariff Classification Appeals Division, Office of Regulations and Rulings, located at Franklin Court, 1099 14th Street, N.W., Suite 4000, Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Arnold L. Sarasky, Food and Chemicals Classification Branch, (202) 482–7020.

SUPPLEMENTARY INFORMATION:

BACKGROUND

Pursuant to section 625(c)(1) of the Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs intends to modify several rulings pertaining to the tariff classification of protective gear for use in the sport of in-line skating.

Headquarters Ruling Letters (HRL) 957120 and 957396, dated January 31, 1995 and December 12, 1994, respectively, District Ruling Let-

ter (DD) 898364, dated June 20, 1994, New York Ruling Letter (NYRL) 895546, dated March 28, 1994, held that certain protective gear for use in the sport of in-line skating was classifiable under subheading 9506.70.2090, Harmonized Tariff Schedule of the United States Annotated (HTSUSA). A copy of the above rulings are set forth in Attachments A, B, C and D to this document.

Customs Headquarters is of the opinion that those rulings are incorrect insofar as they are in conflict with other rulings on similar protective gear for use in the sport of in-line skating and because they incorrectly hold that such gear is classifiable in the subheading which provides solely for skates and parts and accessories thereof.

DD 898364, issued June 20, 1994, issued by the District Director, Portland, ME, held that protective wrist guards used in the sport of in-line skating were classifiable under subheading 6216.00.4600, HTSUSA. That ruling was, in part, modified by HRL 957120, issued on January 31, 1995. A notice of such modification was published in the CUSTOMS BULLETIN issued February 15, 1995. That ruling held that such wrist guards, which did not have sheathes and fourchettes, could not be classified under the provision for gloves and that they were classifiable in subheading 9506.70.2090, HTSUSA.

NYRL, 895546, dated March 28, 1994, held that protective half-fingered gloves, known as wrist guards, for use in the sport of in-line skating were classifiable in subheading 6216.00.6400, HTSUSA, when imported by themselves and not as a part of a set including other types of protective gear designed for use in the sport of in-line skating HRL 957396, issued December 12, 1994, noted that the above ruling did not cover such wrist guard when imported as part of a set including other types of protective gear for that sport. HRL 957396 held that when those half-fingered gloves were imported as part of a set containing other protective gear, i.e., elbow and knee pads, for use in the sport of in-line skating, they were classifiable in subheading 9506.70.2090, HTSUSA.

We have reviewed the above rulings and concluded that they incorrectly held that the subject protective gear is an accessory to in-line skates. We issued HRL 958387, HRL 958456 and HRL 958710 on April 8, 1996, holding that protective gear for the sport of in-line skating was equipment for that sport, not parts or accessories of in-line skates, and that they were, therefore, classifiable in subheading 9506.99.6080, HTSUSA.

We propose to modify the rulings noted the second paragraph under "BACKGROUND", supra, in order to place the protective gear for the sport of in-line skating, which was the subject of those rulings, in subheading 9506.99.6080, HTSUSA.

Before taking this action, consideration will be given to any written comments timely received. The proposed rulings modifying HRL 957120, HRL 957396, DD 898364 and NYRL 895546, are set forth in Attachments E and F to this document

Claims for detrimental reliance under section 177.9, Customs Regulations (19 CFR 177.9), will not be entertained for actions occurring on or after the date of publication of this notice.

Dated: July 5, 1996.

JOHN B. ELKINS,
(for John Durant, Director,
Tariff Classification Appeals Division.)

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, January 31, 1995.

CLA-2 CO:R:C:F 957120 ALS
Category: Classification
Tariff No. 9506.70.2090

MR. GORDON C. ANDERSON
MEYER CUSTOMS BROKERS
8100 Mitchell RD., Suite 200
Eden Prairie, MN 55344

Re: Modification of District Ruling Letter (DD) 896364, dated June 20, 1994, regarding protective wrist guards designed for use in the sport of in-line skating.

DEAR MR. ANDERSON:

In DD 898364 you were advised that protective wrist guards for use in the sport of in-line skating were classifiable in subheading 6216.00.4600, Harmonized Tariff Schedule of the United States Annotated (HTSUSA). We noted that the ruling was premised on the classification of such items as gloves. Pursuant to section 625, Tariff Act of 1930 (13 U.S.C. 1625), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103-182, 107 Stat. 2057, 2186 (1993) (hereinafter section 625), notice of the proposed revocation of DD 898364 was published December 21, 1994, in the CUSTOMS BULLETIN, Volume 28, Number 51.

Facts:

The articles under consideration, which are referred to as a wrist guards, are fabricated from a combination of knit and mesh man-made fibers which provide the base of the guards, synthetic leather stitched on the stress areas, velcro® fastener straps, and molded plastic inserts on the backs and fronts. The articles do not have sheathes and fourchettes which cover the fingers. They have thumb holes and only cover the wrists and upper part of the hands.

Issue:

What is the classification of the subject articles imported for use in the sport of in-line skating?

Law and Analysis:

Classification of merchandise under the HTSUSA is governed by the General Rules of Interpretation (GRI's) taken in order. GRI 1 provides that the classification is determined first in accordance with the terms of the headings and any relative section and chapter notes. If GRI 1 fails to classify the goods and if the headings and legal notes do not otherwise require, the remaining GRI's are applied, taken in order.

DD 898364 held that the subject wrist guards were classifiable in subheading 6216.00.4600, HTSUSA, the provision for "Gloves, Mittens, and Mitts: Other: of man-made fibers: other gloves, mitten and mitts, all the foregoing specially designed for use in

sports, including ski and snowmobile gloves, mittens and mitts." That ruling held that other protective gear used in the sport of in-line skating, i.e. elbow and knee pads, were classifiable in subheading 9506.70.2090, HTSUSA. That subheading provides for "Articles and equipment for general physical exercise, gymnastics, athletics, other sports * * *: Ice skates and roller skates, including skating boots with skates attached; parts and accessories thereof: other."

We note that the wrist guards covered by that ruling did not have fingers or thumbs. They had a thumb hole and the remainder thereof merely covered the upper part of the hands. We do not believe that these items, without sheaths and fourchettes to cover the fingers and thumbs, are gloves. These articles are not, therefore, excluded from classification in Chapter 95, HTSUSA, by legal note 1 to that Chapter. Accordingly, these wrist guards, which perform a protective function similar in nature to the other protective gear covered by DD 898364, should be classified in the same subheading as those items.

Holding:

Wrist guards, for use as protective gear in the sport of in-line skating, which have neither fingers nor thumbs but only cover the wrists and palms of the hands, are classifiable in subheading 9506.70.2090, HTSUSA, whether separately imported or imported in a set with other protective gear for use in in-line skating. Merchandise so classifiable is subject to a free general rate of duty.

DD 898364 is affirmed as to the elbow and knee pads covered thereby. It is modified as to the wrist guards covered therein. In accordance with section 625, this ruling will become effective 60 days after publication in the CUSTOMS BULLETIN. Publication of rulings or decisions pursuant to section 625 does not constitute a change of practice or position in accordance with section 177.10(c)(1), Customs Regulations (19 CFR 177.10(c)(1)).

JOHN DURANT,
Director,
Commercial Rulings Division.

[ATTACHMENT B]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, December 12, 1994.

CLA–2 CO:R:C:F 957396 ALS
Category: Classification
Tariff No. 9506.70.2090

MR. GORDON C. ANDERSON
MEYER CUSTOMS BROKERS
8100 Mitchell RD., Suite 200
Eden Prairie, MN 55344

Re: New York Ruling Letter (NYRL) 895546, dated March 28, 1994, regarding protective gear designed for use in the sport of in-line skating.

DEAR MR. ANDERSON:

In NYRL 895546 you were advised that protective wrist guards for use in the sport of in-line skating were classifiable in subheading 6216.00.4600, Harmonized Tariff Schedule of the United States Annotated (HTSUSA). We noted that that ruling was premised on the importation of such items by themselves and not as a part of a set including other types of protective gear for that sport. This ruling relates to the proper classification of protective gear designed for use in the sport of in-line skating when importer as a set.

Facts:

The articles under consideration which are referred to as wrist guards are fabricated from a combination of knit and mesh man-made fibers which provide the base of the guards, synthetic leather on the palms, velcro® fastener straps, and molded plastic on the backs and fronts. The articles have sheathes with fourchettes which partially cover the fingers.

Issue:

What is the classification of the subject articles when imported in a set composed of various protective items for use in the sport of in-line skating?

Law and Analysis:

Classification of merchandise under the HTSUSA is governed by the General Rules of Interpretation (GRI's) taken in order. GRI 1 provides that the classification is determined first in accordance with the terms of the headings and any relative section and chapter notes. If GRI 1 fails to classify the goods and if the headings and legal notes do not otherwise require, the remaining GRI's are applied, taken in order.

NYRL 895546 held that the subject articles were gloves and classifiable in subheading 6216.00.4600, HTSUSA. We agree that such articles are half-fingered gloves and, when separately imported, are classifiable as indicated in that ruling. We, however, note that that ruling did not cover the situation where the gloves are imported in a set including elbow pads and knee pads which also serve as protective gear for use in the sport of in-line skating. The ruling request to which that ruling responded had indicated that the gloves could be separately imported and imported as part of a set as that term is defined in GRI 3.

NYRL 895546 held that elbow and knee pads used in the sport of in-line skating were classifiable in subheading 9506.70.2090, HTSUSA, and that the gloves were classifiable in subheading 6216.00.4600, HTSUSA. The subheadings, which are equally specific, refer to only a part of the articles put up in a set for retail sale. Thus, classification pursuant to GRI 3(a) is not possible. Also since we are not able to conclude that any one of the articles gives the set its essential character, classification pursuant to GRI 3(b) is not possible.

We, therefore, must utilize GRI 3(c) to classify the set of protective gear pursuant to that rule, goods which cannot be classified by reference to GRI 3(a) or 3(b), are classified in the heading which occurs last in numerical order among those which equally merit consideration in determining their classification. Accordingly, although the protective gloves cannot be classified in Chapter 95, HTSUSA, pursuant to Legal Note 1 of that chapter, when separately imported, when imported as part of a set, they must be classified in heading 9506.

Holding:

Half-fingered gloves, known as wrist guards, for use as protective gear in the sport of in-line skating, when imported with other protective gear, i.e., elbow and knee pads, as a set for use in that sport, are classifiable in subheading 9506.70.2090, HTSUSA. Merchandise so classifiable is subject to a free general rate of duty.

JOHN DURANT,
Director,
Commercial Rulings Division.

[ATTACHMENT C]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, June 20, 1994.

CLA–2–95:P:CO:D13 898364
Category: Classification
Tariff Nos. 9506.70.2090 and 6216.00.4600

MR. GORDON C. ANDERSON
MEYER CUSTOMS BROKERS
8100 Mitchell Road, Suite 200
Eden Prairie, MN 55344

Re: The tariff classification of various rollerblade protective gear from China or Thailand.

DEAR MR. ANDERSON:

In a letter dated May 19, 1994, you requested a tariff classification ruling on behalf of your client, Rollerblade.

Submitted with your request were various pieces of protectIve gear designed to protect the skater front impact injury while in-line skating. Sample #1, are elbow pads. The elbow pads are comprised of a molded plastic shell protector attached to a slip-on stretchable sleeve. The sleeve is said to be constructed of manmade fibers and contains EVA foam padding. Straps with velcro fasteners are at the top and bottom of the sleeve to hold the elbow pad in place.

Sample #2, are knee pads. These knee pads are similar in construction to the elbow pads, ie: plastic protector attached to a elastic sleeve, foam padding and straps to secure them in place. The knee pads are larger than the elbow pads.

Sample #3 are wrist guards. These wrist guards are constructed primarily of a knitted manmade material with artificial leather stitched on areas of stress. There are left hand and right hand wrist guards. Each guard has a thumb hole and when worn, the guard extends into and covers part of the palm. There are three velcro straps used to hold the guard in place. The wrist guard also has two, high impact, plastic splint inserts. One insert fits into in the palm area and a portion of the insert extends outside the guard so that if wearer should fall and put their hand out to stop the fall this plastic insert would hit the pavement rather than the palm. The other plastic insert is located in the back panel. This insert provides strength to, and supports the wrist so that it will not collapse and break if one does fall.

Your letter indicates that this protective gear may be imported individually or in sets containing two or possibly all three items, and they are all exclusively designed and marketed to be used by the in-line skater.

The applicable subheading for the elbow pads and knee pads will be 9506.70.2090, Harmonized Tariff Schedule of the United States (HTSUSA), which provides for "Articles and equipment for general physical exercise, gymnastics, athletics, other sports * * *: ice skates and roller skates, including skating boots with skates attached; parts and accessories thereof: other". The rate of duty will be Free.

The applicable subheading for the wrist guard will be 6216.00.4600, HTSUSA, which provides for "Gloves, Mittens, and Mitts: Other: of man-made fibers: other gloves, mittens and mitts, all the foregoing specially designed for use in sports, including ski and snowmobile gloves, mittens and mitts". The rate of duty will be 5.5 percent *ad valorem*.

This ruling is issued under the provisions of section 177 of the Customs Regulations (19 C.F.R. 177).

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have been filed without a copy, this ruling should be brought to the attention of the Customs officer handling the transaction.

EMERY W. INGALLS,
District Director.

[ATTACHMENT D]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
New York, NY, March 28, 1994.

CLA–2–95:S:N:N8:224 895546
Category: Classification
Tariff No. 9506.70.2090 and 6216.00.4600

GORDON C. ANDERSON
MEYER CUSTOMS BROKERS
8100 Mitchell Rd., Suite 200
Eden Prairie, MN 55344

Re: The tariff classification of protective gear from China.

DEAR MR. ANDERSON:

In your letter dated March 4, 1994, you requested a tariff classification ruling on behalf of Rollerblade, Inc.

The merchandise in question consists of an elbow pad, knee pad and a protective wrist guard. The gear functions as body protection for the wearer while engaged in sport activity.

The elbow pad and knee pad are essentially the same in material and design, constructed of a combination of man-made fiber, molded plastic, EVA foam padding and velcro fasteners. The wrist guard is a combination of knit and mesh man-made fibers which provides the base of the guard, synthetic leather on the palm, velcro fasteners straps, and molded plastic on the back and front. You state that the protective gear is imported individually or in a set containing all three items and is exclusively designed and marketed to be used by the in-line skater.

The applicable subheading for the elbow pad and knee pad will be 9506.70.2090, Harmonized Tariff Schedule of the United States (HTSUSA), which provides for "Articles and equipment for general physical exercise, gymnastics, athletics, other sports * * *: Ice skates and roller skates, including skating boots with skates attached; parts and accessories thereof: Roller skates and parts and accessories thereof." The rate of duty will be free.

The applicable subheading for the wrist guard will be 6216.00.4600, HTSUSA, which provides for "Gloves, mittens and mitts: Other: Of man-made fibers: other gloves, mittens and mitts, all the foregoing specially designed for use in sports, including ski and snowmobile gloves, mittens and mitts." The rate of duty will be 5.5 percent *ad valorem*.

This ruling is being issued under the provisions of section 177 of the Customs Regulations (19 C.F.R. 177).

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have been filed without a copy, this ruling should be brought to the attention of the Customs officer handling the transaction.

JEAN F. MAGUIRE,
Area Director,
New York Seaport.

[ATTACHMENT E]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC.

CLA–2 RR:TC:FC 959366 ALS
Tariff No. 9506.99.6080

MR. GORDON C. ANDERSON
MEYER CUSTOMS BROKERS
8100 Mitchell Rd., Suite 200
Eden Prairie, MN 55344

Re: Modification of Headquarters Ruling Letter (HRL) 957120, dated January 31, 1995, and District Ruling Letter (DD) 898365, June 20, 1994, regarding protective wrist guards designed for use in the sport of in-line skating when imported in a set.

DEAR MR. ANDERSON:

In DD 898364 your were advised that protective wrist guards for use in the sport of in-line skating were classifiable as gloves in subheading 6216.00.4600, Harmonized Tariff Schedule of the United States Annotated (HTSUSA). In HRL 957120, which modified that ruling, we noted that such items, which do not have sheathes and fourchettes which cover the fingers and have only thumb holes and only cover the wrists and upper part of the hands, were classifiable in subheading 9506.70.2090, HTSUSA, as accessories for use in the sport of in-line skating.

Facts:

The articles under consideration, which are referred to as wrist guards, are fabricated from a combination of knit and mesh man-made fibers which provide the base of the guards, synthetic leather stitched on the stress areas, velcro® fastener straps, and molded plastic inserts on the backs and fronts. The articles do not have sheathes and fourchettes which cover the fingers. They have thumb holes and only cover the wrists and upper part of the hands.

Issue:

What is the classification of the subject articles imported for use in the sport of in-line skating?

Law and Analysis:

Classification of merchandise under the HTSUSA is governed by the General Rules of Interpretation (GRI's) taken in order. GRI 1 provides that the classification is determined first in accordance with the terms of the headings and any relative section and chapter notes. If GRI 1 fails to classify the goods and if the headings and legal notes do not otherwise require, the remaining GRI's are applied, taken in order.

The articles under consideration are protective gear which are utilized to protect the wearer while engaging in the sport of in-line skating. In considering the proper classification of these items we have reviewed subheadings 9506.70.2000 and 9506.99.6080, HTSUSA. The first noted subheading provides for "ice skates and roller skates, including skating boots with skates attached; parts and accessories thereof." We note, without discussion, that the subject articles are not skates, skating boots with skates attached or parts of skates. Thus, in order for the protective gear to be classified in subheading 9506.70.2000, HTSUSA, it must be considered as accessories of skates or skating boots.

As noted in Headquarters Ruling Letter (HRL) 956582, dated March 14, 1995, an accessory is an article that is related to the primary article and is intended for use solely or principally with that primary article. The articles in that case were bands of knit terry cloth with a protective insert of either rigid plastic or closed-cell foam rubber. They were for use in various sports, e.g., baseball, football. These items were marketed in a similar manner to the instant protective gear insofar as they were to help avoid injuries and bruises. It was proffered therein that these bands were accessories to the sports clothing utilized in playing the particular game. We concluded that the bands were not related or connected to a primary article and were not intended for the sole or principal use as a clothing accessory and that they were protective equipment classifiable in subheading 9506.99.6080, HTSUSA.

We have noted that the term "accessory" is not defined in either the HTSUSA or the Explanatory Notes to the Harmonized System (EN). We, however, have repeatedly noted that an accessory is, in addition to being an article related to a primary article, is used solely or principally with that article. We have also noted that an accessory is not necessary to enable the goods with which they are used to fulfill their intended function. They are of secondary importance, not essential of themselves. They, however, must contribute to the effectiveness of the principal article (e.g., facilitate the use or handling of the principal article, widen the range of its uses, or improve its operation). (See HRL 953896, dated February 2, 1994 and HRL 950166, dated November 8, 1991). We have also noted that *Webster's Dictionary* defines an accessory as an object or device that is not essential in itself but adds to the beauty, convenience, or effectiveness of something else.

While the subject guards protect the wearer from injury, they do not contribute to the effectiveness of the in-line skates by making them faster or smoother, or add any other capabilities to the skates. In other words, even though the protective gear may have a psychological effect on the wearer, it does not enhance the capabilities of the skates.

In order to ascertain first hand the method of marketing of this and related protective gear we visited several major sporting goods stores and a warehouse store. We observed the method of display and spoke to the professional staff in the sporting goods stores. We were unable to confirm that the gear is marketed as accessories to in-line skates. The items are marketed as protective gear or protective equipment. Retail advertising confirms such marketing method. While the packaging for the protective gear indicates that it is recommended for in-line skating, there was a lack of reference to such gear on the boxes containing such skates and the owner's manuals and other material in such boxes, when referring to such gear, referred to it as protective gear and not accessories to the skates. We also noted that the literature from some manufacturers indicates that the gear was suitable for other sports, e.g., skateboarding. This empirical observation confirmed our prior opinion that this protective gear is not an accessory to in-line skates.

We next compared subheading 9506.70.2000, HTSUSA, to other subheadings in heading 9506. While there is a similarity among these subheadings, we noted one significant difference. Whereas the other subheadings generally include equipment related to a specific sport or activity, e.g., baseball articles and equipment, in their coverage, subheading 9506.70.2000, HTSUSA, does not include a provision for equipment. Since we must presume that the drafters of that tariff provision intended to omit a reference to equipment and that it was not an oversight, we considered what other subheading might be applicable to the subject gear. We also concluded that the protective gear, while not necessary for the sport of in-line skating, was specially designed protective equipment for that sport.

In *Cruger's Inc. v. United States*, 12 Ct. Customs Appeals. 516, 519, T.D. 40730 (1925), the Court indicated "the term equipment applies to those articles that are so essential or necessary to the game as to make it impossible to play the game without them." It further noted that the term "equipment" included inanimate objects ordinarily used and needed or required for the safe, proper, and efficient taking of physical exercise and efficient playing of any indoor or outdoor ball game or sport. Subsequently, in *Slazengers, Inc. v. United States*, 33 U.S. Customs Ct. Rpts. 338, Abs. 58323 (1354), the Court concluded that articles which serve "no other purpose but to aid in a safer and more efficient game * * * are within the designation of 'equipment'." In *American Astral Corporation v. United States*, 62 U.S. Customs Ct. Rpts. 563, 571, C.D. 3827 (1969), after referencing a tariff classification study, the Court concluded "* * * the statutory designation of "equipment" is satisfied once it is shown that the article is specially designed for use in the game or sport." (See also *Nichimen Co., v. United States*, 72 U.S. Customs Ct. Rpts. 130, C.D. 4514 (1974)).

Consequently, "equipment" for purposes of the sports provision of heading 9506 is generally considered to include not only those articles that are essential or necessary to the play of a game or sport but the gear specially designed for use by the player in connection with the game or sport. Accordingly, the instant protective gear, being specially designed for use in connection with the sport of in-line skating, is skating equipment for tariff purposes and is classifiable in the residual provision of heading 9506.

Holding:

Protective articles such as wrist guards without fourchettes, primarily designed to be used in the sport of in-line skating and composed of plastic materials and binding straps with velcro ™ fasteners are considered equipment for that sport and are classifiable in subheading 9506.99.6080, HTSUSA. Merchandise so classifiable is subject to a general rate of duty of 4.4 percent *ad valorem*.

DD 898364 and HRL 957120 are hereby modified, as to all the articles covered by those rulings, to conform to this ruling.

JOHN DURANT,
Director,
Tariff Classification Appeals Division.

[ATTACHMENT F]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC.

CLA–2 RR:TC:FC 959376 ALS
Tariff No. 9506.99.6080

MR. GORDON C. ANDERSON
MEYER CUSTOMS BROKERS
8100 Mitchell Rd., Suite 200
Eden Prairie, MN 55344

Re: Modification of Headquarters Ruling Letter (HRL) 957396, dated December 12, 1994, and New York Ruling Letter (NYRL) 895546, Dated March 28, 1994, regarding certain protective gear designed for use in the sport of in-line skating.

DEAR MR. ANDERSON:

In NYRL 895546 you were advised that certain protective wrist guards for use in the sport of in-line skating were classifiable in subheading 6216.00.4600, Harmonized Tariff Schedule of the United States Annotated (HTSUSA). In HRL 957396, which modified that ruling, we noted that such items, half-fingered gloves with sheathes and fourchettes, were classifiable in subheading 9506.70.2090, HTSUSA, when imported with other protective gear, i.e., elbow and knee pads, as a set for use in the sport of in-line skating.

Facts:

The articles under consideration which are referred to as wrist guards are fabricated from a combination of knit and mesh man-made fibers which provide the base of the

guards, synthetic leather on the palms, velcro® fastener straps, and molded plastic on the backs and fronts. The articles have sheathes with fourchettes which partially cover the fingers.

Issue:

What Is the classification of the subject articles when imported in a set composed of various protective items for use in the sport of in-line skating?

Law and Analysis:

Classification of merchandise under the HTSUSA is governed by the General Rules of Interpretation (GRI's) taken in order. GRI 1 provides that the classification is determined first in accordance with the terms of the headings and any relative section and chapter notes. If GRI 1 fails to classify the goods and if the headings and legal notes do not otherwise require, the remaining GRI's are applied, taken in order.

The articles under consideration are protective gear which are utilized to protect the wearer while engaging in the sport of in-line skating. In considering the proper classification of these items we have reviewed subheadings 9506.70.2000 and 9506.99.6080, HTSUSA. The first noted subheading provides for "ice skates and roller skates, including skating boots with skates attached; parts and accessories thereof." We note, without discussion, that the subject articles are not skates, skating boots with skates attached or parts of skates. Thus, in order for the protective gear to be classified in subheading 9506.70.2000, HTSUSA, it must be considered as accessories of skates or skating boots.

As noted in Headquarters Ruling Letter (HRL) 956582, dated March 14, 1995, an accessory is an article that is related to the primary article and is intended for use solely or principally with that primary article. The articles in that case were bands of knit terry cloth with a protective insert of either rigid plastic or closed-cell foam rubber. They were for use in various sports, e.g., baseball, football. These items were marketed in a similar manner to the instant protective gear insofar as they were to help avoid injuries and bruises. It was proffered therein that these bands were accessories to the sports clothing utilized in playing the particular game. We concluded that the bands were not related or connected to a primary article and were not intended for the sole or principal use as a clothing accessory and that they were protective equipment classifiable in subheading 9506.99.6080, HTSUSA.

We have noted that the term "accessory" is not defined in either the HTSUSA or the Explanatory Notes to the Harmonized System (EN). We, however, have repeatedly noted that an accessory is, in addition to being an article related to a primary article, is used solely or principally with that article. We have also noted that an accessory is not necessary to enable the goods with which they are used to fulfill their intended function. They are of secondary importance, not essential of themselves. They, however, must contribute to the effectiveness of the principal article (e.g., facilitate the use or handling of the principal article, widen the range of its uses, or improve its operation). (See HRL 953896, dated February 2, 1994 and HRL 950166, dated November 8, 1991). We have also noted that *Webster's Dictionary* defines an accessory as an object or device that is not essential in itself but adds to the beauty, convenience, or effectiveness of something else.

While the subject guards protect the wearer from injury, they do not contribute to the effectiveness of the in-line skates by making them faster or smoother, or add any other capabilities to the skates. In other words, even though the protective gear may have a psychological effect on the wearer, it does not enhance the capabilities of the skates.

In order to ascertain first hand the method of marketing of this and related protective gear we visited several major sporting goods stores and a warehouse store. We observed the method of display and spoke to the professional staff in the sporting goods stores. We were unable to confirm that the gear is marketed as accessories to in-line skates. The items are marketed as protective gear or protective equipment. Retail advertising confirms such marketing method. While the packaging for the protective gear indicates that it is recommended for in-line skating, there was a lack of reference to such gear on the boxes containing such skates and the owner's manuals and other material in such boxes, when referring to such gear, referred to it as protective gear and not accessories to the skates. We also noted that the literature from some manufacturers indicates that the gear was suitable for other sports, e.g., skateboarding. This empirical observation confirmed our prior opinion that this protective gear is not an accessory to in-line skates.

We next compared subheading 9506.70.2000, HTSUSA, to other subheadings in heading 9506. While there is a similarity among these subheadings, we noted one significant differ-

ence. Whereas the other subheadings generally include equipment related to a specific sport or activity, e.g., baseball articles and equipment, in their coverage, subheading 9506.70.2000, HTSUSA, does not include a provision for equipment. Since we must presume that the drafters of that tariff provision intended to omit a reference to equipment and that it was not an oversight, we considered what other subheading might be applicable to the subject gear. We also concluded that the protective gear, while not necessary for the sport of in-line skating, was specially designed protective equipment for that sport.

In *Cruger's Inc. v. United States*, 12 Ct. Customs Appeals, 516,519, T.D. 40730 (1925), the Court indicated "the term equipment applies to those articles that are so essential or necessary to the game as to make it impossible to play the game without them." It further noted that the term "equipment" included inanimate objects ordinarily used and needed or required for the safe, proper, and efficient taking of physical exercise and efficient playing of any indoor or outdoor ball game or sport. Subsequently, in *Slazengers, Inc. v. United States*, 33 U.S. Customs Ct. Rpts. 338, Abs. 58323 (1954), the Court concluded that articles which serve "no other purpose but to aid in a safer and more efficient game * * * are within the designation of 'equipment'." In *American Astral Corporation v. United States*, 62 U.S. Customs Ct. Rpts. 563, 571, C.D. 3827 (1969), after referencing a tariff classification study, the Court concluded "* * * the statutory designation of "equipment" is satisfied once it is shown that the article is specially designed for use in the game or sport." (See also *Nichimen Co. v. United States*, 72 U.S. Customs Ct. Rpts. 130, C.D. 4514 (1974)).

Consequently, "equipment" for purposes of the sports provision of heading 9506 is generally considered to include not only those articles that are essential or necessary to the play of a game or sport but the gear specially designed for use by the player in connection with the game or sport. Accordingly, the instant protective gear, being specially designed for use in connection with the sport of in-line skating, is skating equipment for tariff purposes and is classifiable in the residual provision of heading 9506.

Holding:

Protective articles such as wrist guards without fourchettes, primarily designed to be used in the sport of in-line skating and composed of plastic materIals and binding straps with velcro™ fasteners are considered equipment for that sport and are classifiable in subheading 9506.99.6080, HTSUSA. Merchandise so classifiable is subject to a general rate of duty of 4.4 percent *ad valorem*.

NYRL 895546 and HRL 957396 are hereby modified, as to all the articles covered by those rulings, to conform to this holding.

JOHN DURANT,
Director
Tariff Classification Appeals Division.

Index

Customs Bulletin and Decisions
Vol. 30, No. 29/30, July 24, 1996

U.S. Customs Service

Treasury Decisions

General Notices

CUSTOMS RULINGS LETTERS

Federal Recycling Program
Printed on Recycled Paper
U.S. G.P.O. 1996–405–477–00096